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UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA

PARNELL COLVIN,  
 Plaintiff,

Case No. 2:20-cv-01765-APG-EJY

v.

M.J. DEAN CONSTRUCTION, INC.,  
 Defendant,

**APPENDIX OF EXHIBITS IN SUPPORT  
 OF PLAINTIFF'S PARTIAL MOTION FOR  
 SUMMARY JUDGMENT ON LIABILITY  
 (Volume Two)**

Exhibit	Description	Page Numbers
11	Deposition of Kevin Gutierrez, taken on July 29, 2021	APP 254-301
12	Deposition of John Thomason, taken on July 29, 2021	APP 302-352
13	Deposition of Paul Rosequist, taken on August 6, 2021	APP 353-383

DATED this 8th day of October, 2021.

LAW OFFICE OF DANIEL MARKS

/s/ Nicole M. Young

\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS, and that on the 8th day of October, 2021, I did serve a true and correct copy of the above and foregoing **APPENDIX OF EXHIBITS IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON LIABILITY (Volume Two)** by way of Notice of Electronic Filing provided by the court mandated ECF filing service, upon the Defendant at the following:

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## **EXHIBIT 11**

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

PARNELL COLVIN,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CASE NO.:
	)	2:20-cv-01765-APG-EJY
M.J. DEAN CONSTRUCTION,	)	
INC.,	)	
	)	
Defendant.	)	

**CERTIFIED  
TRANSCRIPT**

VIDEO CONFERENCE DEPOSITION OF KEVIN GUTIERREZ  
LAS VEGAS, NEVADA  
THURSDAY, JULY 29, 2021

REPORTED BY: JACKIE JENNELLE, RPR, CCR #809  
JOB #416110

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1 APPEARANCES (ALL VIA VIDEO CONFERENCE):

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I N D E X

WITNESS: KEVIN GUTIERREZ

EXAMINATION

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BY MR. MARKS

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1 LAS VEGAS, NEVADA

2 THURSDAY, JULY 29, 2021; 10:00 a.m.

3 -o0o-

4 MR. MARKS: Rob, you've agreed due to the  
5 COVID uptick, we agreed to do these by Zoom so the  
6 witness could be unmasked and we could see him.

7 Agreed?

8 MR. ROSENTHAL: Agreed.

9 Thereupon--

10 KEVIN GUTIERREZ,  
11 was called as a witness, and having been first duly  
12 sworn, was examined and testified as follows:

13 EXAMINATION

14 BY MR. MARKS:

15 Q. Could you state your name, please?

16 A. Kevin Scott Gutierrez.

17 Q. And spell your last name for the court  
18 reporter.

19 A. G-U-T-I-E-R-R-E-Z.

20 Q. And where are you employed right now?

21 A. M.J. Dean Construction.

22 Q. Okay. And what's the business address of  
23 M.J. Dean?

24 A. I don't know that offhand.

25 Q. Okay. Are you on a specific project right

1 now?

2 A. Yes.

3 Q. What project?

4 A. MSG Sphere.

5 Q. Is that MSG Sphere?

6 A. Yes.

7 Q. And what's the nature of that project?

8 A. Theater.

9 Q. It's a theater?

10 A. Yes.

11 Q. And how long have you been on that project?

12 A. Two years-four months.

13 Q. So when did that project -- do you know  
14 when that project started?

15 A. When I arrived, approximately March 20th of  
16 2019.

17 Q. And was that the beginning of the project,  
18 or was it already going?

19 A. That was the beginning.

20 Q. And what was the role of M.J. Dean in that  
21 project?

22 A. Concrete, pour concrete.

23 Q. And how long do you think that project's  
24 going to continue?

25 For how much longer?



1 A. Year and a half.

2 Q. So the estimated completion date would not  
3 be until the end of 2022?

4 A. Actually, it's 2023.

5 Q. The end?

6 A. Yes.

7 Q. So the end of 2023 would be two and a half  
8 more years?

9 A. Yes.

10 Q. And approximately how many employees does  
11 Dean have right now out at the Sphere project?

12 A. Approximately 75.

13 Q. And what types of employees do they have?

14 A. We have a concrete division, and we have a  
15 cleanup division, which would be on the general  
16 contractor's side.

17 Q. What do you mean by the general  
18 contractor's side?

19 A. M.J. Dean is the general contractor which  
20 oversees all the subs.

21 Q. I thought Hunt was the general contractor.

22 A. Hunt was. It's Hunt/M.J. Dean.

23 Q. And has M.J. Dean -- Hunt/M.J. Dean always  
24 been the general contractor?

25 A. Yes.

1           **Q.     And what is your title -- job title for the**  
2           **MSG Sphere project?**

3           A.     I'm a general foreman overseeing concrete.

4           **Q.     Excuse me?**

5           A.     A general foreman overseeing concrete.

6           **Q.     And what does that mean?**

7                   **What does a general foreman do?**

8           A.     I'm in charge of pouring concrete, pouring  
9           it in a timely manner, make sure it's ready,  
10          cleanup, measuring, ordering pumps, ordering  
11          concrete.

12          **Q.     And had you been a general foreman before?**

13          A.     I was a general foreman in 2009.

14          **Q.     With which company?**

15          A.     M.J. Dean.

16          **Q.     So this is the second project you've been**  
17          **the general foreman?**

18          A.     Yes.

19          **Q.     And who chose you as the general foreman?**

20          A.     John Thomason.

21          **Q.     Excuse me?**

22          A.     John Thomason.

23          **Q.     And what is his title with the company?**

24          A.     General superintendent over the whole  
25          company.

1 Q. So by "general superintendent," meaning he  
2 runs all the projects or supervises all the  
3 projects?

4 A. Yes.

5 Q. And you supervise the one project with  
6 Sphere?

7 A. Yes.

8 Q. And approximately how many projects does  
9 M.J. Dean have going at any one time?

10 MR. ROSENTHAL: Objection, vague and  
11 ambiguous.

12 BY MR. MARKS:

13 Q. At the present time, do you know how many  
14 projects M.J. Dean has going?

15 A. Three.

16 Q. Do you know what those projects are?

17 A. MSG Sphere, UNLV Medical Center, and the  
18 FlyOver.

19 Q. What's the FlyOver?

20 A. I'm not quite sure.

21 Q. Now, have you ever had your deposition  
22 taken before?

23 A. No.

24 Q. Did you have an opportunity to talk to your  
25 attorney about the nature of what a deposition is?

1 A. Yes.

2 Q. So I'll review those ground rules so we're  
3 on the same page.

4 I'll be asking a series of questions.  
5 You'll be giving a series of answers. And that will  
6 be typed up by the court reporter.

7 You'll have an opportunity, if you want, to  
8 read the questions and the answers at a later date.

9 Do you understand that?

10 A. Yes.

11 Q. You have an opportunity to read it and sign  
12 it and also to make changes in your testimony.

13 Do you understand that?

14 A. Yes.

15 Q. If you made a change of a major nature and  
16 the matter went to court, the attorneys could  
17 comment on the change, and that could affect your  
18 believability or credibility.

19 Do you understand?

20 A. Yes.

21 Q. I could read verbatim what you said today  
22 and then show the court or the jury that you made a  
23 change in your testimony.

24 Do you understand that?

25 A. Yes.

1           Q.    The oath that the court reporter gave you,  
2   even though we're in a Zoom setting, that's the  
3   exact same oath as if we were all in court in front  
4   of a judge in a black robe.

5                   Do you understand that?

6           A.    Yes.

7           Q.    So although we're acting remotely, you have  
8   the same obligation to tell the truth under the same  
9   penalties for perjury if you fail to tell the truth.

10                   Do you understand that?

11          A.    Yes.

12          Q.    Okay. Now, what is your educational  
13   background?

14          A.    High school.

15          Q.    And what year did you graduate?

16          A.    1998 -- 1988. I'm sorry.

17          Q.    And what state?

18                   Where did you graduate high school?

19          A.    Las Vegas, Nevada.

20          Q.    What high school did you go to?

21          A.    Las Vegas High School.

22          Q.    Did you get into the workforce after high  
23   school?

24          A.    No.

25          Q.    What did you do?

1 Q. When did you get into the construction  
2 industry?

3 A. 2004.

4 Q. At what company?

5 A. M.J. Dean Construction.

6 Q. Did you have to take any classes to get  
7 into construction?

8 A. Yes.

9 Q. And what did you do to get into  
10 construction?

11 A. Took a general labor class through the  
12 union.

13 Q. What union?

14 A. Laborers Union 872.

15 Q. Okay. And did you get certified as any --  
16 did you go through an apprenticeship program, that  
17 sort of thing?

18 A. I did.

19 Q. And how long was the program?

20 A. Two years.

21 Q. Okay. And did you ultimately become a  
22 journeyman?

23 A. Yes.

24 Q. And what year did you become a journeyman?

25 A. 2005.

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1           **Q.     And from 2005, have you worked for Dean**  
2 **continuously?**

3           A.     Off and on.

4           **Q.     What do you mean "off and on"?**

5           A.     I worked with Dean from 2004 to 2010. We  
6 were laid off for lack of work, came in back in  
7 2011, worked with Dean until 2014.

8                     I was laid off for lack of work, reduction  
9 in force. Came back to Dean in 2016 for eight  
10 months and was laid off for lack of work. Then came  
11 back in March 6th of 2019 and currently employed.

12           **Q.     So from March 6, 2019, you've worked**  
13 **continuously for Dean?**

14           A.     Yes.

15           **Q.     When you were laid off for lack of work,**  
16 **did you ever work for other companies?**

17           A.     Yes.

18           **Q.     And what other companies did you work for?**

19           A.     When I got laid off in 2014, I worked for  
20 Thor Construction.

21           **Q.     And what about in '16?**

22           A.     In '16, I went to work for Kiewit  
23 Infrastructure.

24           **Q.     As a general foreman, do you choose your**  
25 **team of laborers that worked on the Sphere project?**

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1 A. No.

2 Q. Who chooses them?

3 A. John Thomason.

4 Q. So you had nothing to do with who was  
5 chosen to work on the project?

6 A. No.

7 Q. All right. Now, in 2020, in March or April  
8 of 2020, there were layoffs because of COVID,  
9 correct?

10 A. Yes.

11 Q. Did you make the decision on who to lay  
12 off?

13 A. No.

14 Q. Who made that decision?

15 A. John Thomason.

16 Q. Now, isn't it true the Sphere project never  
17 totally shut down?

18 A. Yes.

19 Q. Isn't that true?

20 A. It did shut down.

21 Answer the -- mention the question again.

22 Q. Let's go back.

23 In 2019, you came to the beginning of the  
24 Sphere project, correct?

25 A. Yes.



1 Q. Prior to COVID, do you know how many Dean  
2 employees were there?

3 A. I would have to say around 350.

4 Q. And how many were laborers?

5 A. 80.

6 Q. And you're saying they were all hired by  
7 John Thomason?

8 A. Yes.

9 Q. You didn't have any decision-making on who  
10 was hired?

11 A. No. He tells me the number. I call the  
12 hall. I get the number that he wants. Everything  
13 has to go through him as far as hiring personnel on  
14 the job.

15 Q. But you don't have friends or family  
16 members that you personally hire for the job?

17 A. No.

18 Q. All right. When COVID -- you recall the  
19 time COVID hit in March and April of 2020, correct?

20 A. Yes.

21 Q. And it was initially a two-week pause.  
22 Do you recall that?

23 A. Yes.

24 Q. The governor -- it was a two-week pause at  
25 the end of March, beginning of April of 2020,

1 correct?

2 A. Yes.

3 MR. ROSENTHAL: Sorry. Hold on. You're  
4 talking over the attorney. So please let him ask  
5 his questions first and then answer.

6 Okay?

7 THE WITNESS: Yes.

8 BY MR. MARKS:

9 Q. I think you're doing fine because there's a  
10 delay, so it's coming through on my end.

11 Did the job actually stop all work in March  
12 or April of 2020 for the two weeks?

13 A. No.

14 Q. The job continued because it was designated  
15 a priority construction project by the governor,  
16 correct?

17 A. I don't know that part.

18 Q. It never totally stopped?

19 A. No.

20 Q. Isn't that true?

21 "No," meaning it never totally stopped,  
22 correct?

23 A. Yes.

24 Q. And the job was designated an essential  
25 project, similar to Allegiant field for the Raiders

1     **stadium, correct?**

2                   MR. ROSENTHAL: Objection, asked and  
3 answered.

4 BY MR. MARKS:

5           **Q. You can answer.**

6                   MR. ROSENTHAL: If you know the answer, you  
7 can go ahead.

8 BY MR. MARKS:

9           **Q. You can answer, correct?**

10           A. I would have to explain what happened.

11           **Q. You'll have a chance to explain.**

12                   You understood that this project was  
13 designated an essential project; isn't that true?

14                   MR. ROSENTHAL: Objection, asked and  
15 answered.

16 BY MR. MARKS:

17           **Q. You can still answer, sir.**

18           A. I didn't know nothing about the governor.

19           **Q. Okay. Fine.**

20                   Did you have anything to do with the lay --  
21 deciding who would be laid off?

22           A. No.

23           **Q. Did you have anything to do with deciding**  
24 **who would be rehired?**

25           A. No.

1 Q. Was there a time that people were rehired  
2 after the layoffs?

3 A. Yes.

4 Q. And what point in time was that?

5 A. Approximately two weeks after we were told  
6 they were going to shut down.

7 Q. And was that in April of 2020?

8 A. Yes.

9 Q. And you're saying that you had nothing to  
10 do with deciding who was actually rehired?

11 A. No.

12 Q. "No," meaning you had nothing to do with  
13 it?

14 A. I had nothing to do with it.

15 Q. Okay. Prior to the incident with  
16 Mr. Colvin, were you ever accused of discrimination  
17 against African-American employees before?

18 A. No.

19 MR. ROSENTHAL: Objection.

20 Slow down.

21 Objection, vague and ambiguous, lacks  
22 foundation.

23 MR. MARKS: All right. He's answered.

24 BY MR. MARKS:

25 Q. Were you ever accused of race

1 discrimination?

2 A. No.

3 Q. Now, you were familiar with the M.J. Dean  
4 anti-harassment policy?

5 A. Yes.

6 Q. Is that correct?

7 A. Yes.

8 Q. And M.J. Dean has various policies against  
9 discrimination on the basis of race, correct?

10 A. Yes.

11 Q. And as a foreman, part of your job is to  
12 enforce those policies?

13 A. Yes.

14 Q. So if you saw or heard discriminatory  
15 racial comments, what would you do?

16 MR. ROSENTHAL: Objection, incomplete  
17 hypothetical, vague and ambiguous, and lacks  
18 foundation.

19 MR. MARKS: You're only allowed to -- Rob,  
20 you're only allowed --

21 MR. ROSENTHAL: Yeah.

22 MR. MARKS: -- to object to the form. And  
23 we're on Zoom, so I'd appreciate no speaking  
24 objections.

25 MR. ROSENTHAL: We've been down this road

1 before.

2 MR. MARKS: We have --

3 MR. ROSENTHAL: -- and the last time --  
4 hold on. Let me finish at least my comment, which  
5 is that that's precisely what you were doing  
6 previously, and we had both agreed to object only --  
7 that we could have -- state the basis for the  
8 objection, which is, by the way, what you were doing  
9 during my deposition for Mr. Colvin.

10 (Multiple parties speaking.)

11 MR. ROSENTHAL: With respect to Mr. Colvin,  
12 you did not state object as to form --

13 (Thereupon, an off-the-record discussion was had.)

14 BY MR. MARKS:

15 Q. All right. Next question: Mr. Gutierrez,  
16 what would you do if you heard racial epithets on  
17 the job?

18 MR. ROSENTHAL: Objection, vague and  
19 ambiguous, incomplete hypothetical, lacks  
20 foundation.

21 BY MR. MARKS:

22 Q. Go ahead and answer.

23 MR. ROSENTHAL: You can answer, if you  
24 know.

25 THE WITNESS: Report to safety.

1 BY MR. MARKS:

2 Q. And who at safety would you report it to?

3 MR. ROSENTHAL: Objection, vague and  
4 ambiguous, overbroad, incomplete hypothetical.

5 MR. MARKS: Are you going to object to  
6 every question, Rob?

7 MR. ROSENTHAL: If I have to. I cannot  
8 have a running objection, as you well know, because  
9 they're not recognized.

10 BY MR. MARKS:

11 Q. Who would you report this to at safety?

12 MR. ROSENTHAL: Objection, vague and  
13 ambiguous, incomplete hypothetical, lacks  
14 foundation.

15 BY MR. MARKS:

16 Q. You can answer.

17 A. Paul Rosequist.

18 Q. And what was his official -- what was his  
19 title?

20 A. Safety director.

21 Q. During the time you worked at the Sphere  
22 project from 2019 to the present, did you ever  
23 report to Mr. Rosequist any racial comments or  
24 discriminatory comments?

25 A. No.

1 Q. All right. Have you personally ever used  
2 the N-word?

3 A. Yes.

4 Q. And on what occasion have you used it?

5 A. When I was younger.

6 Q. Did you use it in prison?

7 A. No.

8 Q. When you say when you were younger, when's  
9 the last time you used the N-word?

10 A. 20 years ago.

11 Q. Did you ever use the N-word relating to  
12 Mr. Colvin?

13 A. Never.

14 Q. Did you ever use the N-word on the Sphere  
15 project to any African-American employee?

16 A. Never.

17 Q. Did you ever have to discipline Mr. Colvin?

18 A. I'm not sure if it was a discipline. I  
19 moved him to certain -- a couple areas.

20 Q. But did you ever have to discipline him?

21 A. No.

22 Q. All right. Was Mr. Colvin a good employee?

23 A. He was okay.

24 Q. He was satisfactory?

25 A. At times.



1 Q. Did you ever have to write him up?

2 A. No.

3 Q. Where was he working on the Sphere project?

4 A. He began in Area D.

5 Q. And what is Area D?

6 A. They're support areas: Area A, Area B,  
7 Area C, and Area D.

8 Q. And how would you describe Area D?

9 A. Area D, it was an area. If the project was  
10 broke up into four sections -- and basically, if you  
11 look at a dome, split it into quarters.

12 Q. And did Mr. Colvin ever work in the yard?

13 A. Yes.

14 Q. What is the yard?

15 A. This would have been the saw yard where  
16 they were making material for the building.

17 Q. And what's the purpose of the person --  
18 what does the person working in the yard do?

19 A. Stacking material, cleaning up behind the  
20 carpenters.

21 Q. So during COVID, even during the weeks of  
22 COVID, the first two weeks, employees had to  
23 continue to work in the yard, correct, because you  
24 had all the materials there?

25 A. No.

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1 Q. "No," they didn't?

2 A. No.

3 Q. What happened to the yard during that two  
4 weeks?

5 A. That was the first position to go.

6 Q. Okay. But even during the two weeks, did  
7 construction on Sphere continue the first two weeks  
8 of COVID?

9 A. Yes.

10 Q. And after two weeks of COVID, a number of  
11 employees were rehired, correct?

12 A. Yes.

13 Q. Do you know how many were rehired?

14 A. 100.

15 Q. How many were let go during the two weeks,  
16 the first two weeks, of COVID?

17 A. 300.

18 Q. And then after two weeks, 100 were rehired?

19 A. The rehire -- whoever was onsite at that  
20 moment stayed. And then the number that John  
21 Thomason gave us, we met that number.

22 Q. Right.

23 Do you know how many were onsite during the  
24 two weeks?

25 A. I don't recall total.

1 Q. But there were M.J. Dean employees  
2 onsite --

3 A. Yes.

4 Q. -- during the first two weeks of COVID?

5 And then after the two weeks, you're saying  
6 another group of a hundred or more were rehired?

7 A. I'm saying that the total would have been a  
8 hundred with the people -- with the workers that  
9 were still onsite.

10 Q. Okay. And did more people get rehired  
11 later in 2020?

12 A. Yes.

13 Q. And when -- when -- at what point in time  
14 later in 2020 did people get rehired?

15 A. I don't recall the exact date.

16 Q. Did there come a time when most of the  
17 people that were there before COVID were rehired  
18 during the 2020 period?

19 MR. ROSENTHAL: Objection, vague and  
20 ambiguous.

21 BY MR. MARKS:

22 Q. You can answer.

23 A. Yes.

24 Q. And what point in time was that?

25 A. July.

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1 Q. July of 2020?

2 A. Yes.

3 Q. All right. During the year 2020, did you  
4 ever have to run a night crew for this project?

5 A. Yes.

6 Q. Do you know when the night crew first  
7 started?

8 A. The -- I don't know. I don't know. I  
9 don't recall.

10 Q. But at some point in 2020?

11 A. Yes.

12 Q. Were workers getting overtime --

13 A. Yes.

14 Q. -- in --

15 And at what point in time were workers  
16 getting overtime?

17 MR. ROSENTHAL: Objection, vague and  
18 ambiguous.

19 BY MR. MARKS:

20 Q. In 2020.

21 MR. ROSENTHAL: Objection, vague and  
22 ambiguous.

23 BY MR. MARKS:

24 Q. You can answer.

25 A. Overtime came daily.

1           **Q.     During all of 2020?**

2           A.     There was periods when we worked overtime,  
3           and there was periods when we didn't work overtime  
4           depending on the scope of work.

5           **Q.     In 2020?**

6           A.     Yes.

7           **Q.     Why is there overtime versus hiring other**  
8           **people?    Explain that.**

9                   MR. ROSENTHAL:   Objection, calls for  
10           speculation, vague and ambiguous.

11           BY MR. MARKS:

12           **Q.     You can answer.**

13           A.     If I'm pouring concrete, concrete pours  
14           takes a little longer.   That would be considered to  
15           be overtime.

16           **Q.     And why would you use night crew?**

17                   **Is that to speed up the project?**

18                   MR. ROSENTHAL:   Objection, incomplete  
19           hypothetical, vague and ambiguous, calls for  
20           speculation.

21           BY MR. MARKS:

22           **Q.     You can answer.**

23           A.     I believe night crew was so there wasn't so  
24           many workers working on top of each other.

25           **Q.     During the day?**

1 A. Yes. More production with two different  
2 crews.

3 Q. Now, the MSG Sphere, that's a Madison  
4 Square Garden project?

5 "MSG" is Madison Square Garden?

6 A. Yes.

7 Q. And that's Dolan, the owner of the Knicks  
8 and Madison Square Garden?

9 MR. ROSENTHAL: Objection, calls for  
10 speculation.

11 BY MR. MARKS:

12 Q. Do you know who owns the MSG?

13 A. I'm not sure exactly who the owner is.

14 Q. Okay. But this was going to be a concert  
15 hall?

16 A. Yes.

17 Q. In -- so in terms of the completion, from  
18 the window that you're -- in the offices you're at,  
19 you can see MSG Sphere, correct?

20 A. Yes.

21 Q. And how far along would you estimate the  
22 construction is?

23 A. How far along?

24 Q. Yeah. Like what percentage of completion?

25 A. I would say 40 percent. I'm not

1 involved with -- I'm only involved with concrete.

2 Q. But you estimate -- based on your  
3 construction background, you think it's 40 percent  
4 complete?

5 A. Yes.

6 Q. And you can see a Sphere, right?  
7 You can see a Sphere coming out of the  
8 ground from that law firm's offices, correct?

9 A. Yes.

10 Q. At what percent of completion was the MSG  
11 Sphere project in April of 2020?

12 MR. ROSENTHAL: Objection, calls for  
13 speculation, vague and ambiguous.

14 BY MR. MARKS:

15 Q. You can answer. Go ahead.

16 A. 20 percent.

17 Q. On the MSG Sphere project, did you ever see  
18 racist graffiti in a bathroom?

19 A. Yes.

20 Q. And at what point in time did you see it?

21 A. Throughout the job.

22 Q. And did you take any steps to do anything  
23 about that racist graffiti?

24 A. I report that to safety.

25 Q. So who did you report it to?

1 A. I don't recall.

2 Q. Did you ever try to clean or take down the  
3 graffiti?

4 A. No.

5 Q. Do you know if anybody tried to clean or  
6 take down the graffiti?

7 A. Yes.

8 Q. Who did?

9 A. It would be the people that are in charge  
10 of the restrooms. It's reported to safety. Safety  
11 makes it an issue. They bring the restroom people  
12 out. They get rid of the graffiti.

13 Q. So, from your knowledge, was the graffiti  
14 cleaned up and then put back?

15 MR. ROSENTHAL: Objection, vague and  
16 ambiguous, incomplete hypothetical, lacks  
17 foundation.

18 BY MR. MARKS:

19 Q. You can answer.

20 A. Repeat the question, please.

21 Q. So your attorney can object. Unless he  
22 tells you, Don't answer, you're still going to  
23 answer.

24 So I can re-ask the question. He's going  
25 to make his objection. Keep the question in mind,



1 and then I would expect you to answer.

2 Do you understand that?

3 A. Yes.

4 Q. Okay. Just by way of background, you said  
5 there had been racist graffiti at the Sphere project  
6 throughout the project, correct?

7 A. Yes.

8 Q. So do you recall a time when there was  
9 racist graffiti and then you noticed it was cleaned  
10 up and then you noticed it was put back in?

11 A. Yes.

12 Q. And how many different occasions did that  
13 happen?

14 A. 200.

15 Q. So during the -- this is during the  
16 one-year period from 2019 to 2020, this happened 200  
17 times?

18 A. It's an ongoing thing in construction.

19 Q. I'm talking about at the Sphere project.  
20 It happened 200 times during the year?

21 A. It's an estimate.

22 Q. Okay. If we went to the Sphere project  
23 today to the bathroom, would we see racist graffiti?

24 MR. ROSENTHAL: Objection, calls for  
25 speculation.

1 BY MR. MARKS:

2 Q. Would we see racist graffiti?

3 MR. ROSENTHAL: Objection, calls for  
4 speculation.

5 BY MR. MARKS:

6 Q. You can answer, sir.

7 MR. ROSENTHAL: If you know the answer, you  
8 can go ahead.

9 THE WITNESS: I don't -- I don't know.

10 MR. MARKS: Right. Rob, stop coaching the  
11 witness.

12 MR. ROSENTHAL: Go ahead. You can ask your  
13 questions.

14 MR. MARKS: We can call the magistrate if  
15 you coach the witness.

16 (Thereupon, an off-the-record discussion was had.)

17 BY MR. MARKS:

18 Q. Mr. Gutierrez, you were at Mr. Colvin's  
19 deposition, correct?

20 A. Yes.

21 Q. All right. And you had an opportunity to  
22 see exhibits that your attorney showed Mr. Colvin,  
23 correct?

24 A. Yes.

25 (Exhibit 8 Graffiti introduced.)

1 BY MR. MARKS:

2 Q. This Exhibit 8 of this deposition was  
3 Exhibit I of Mr. Colvin's deposition.

4 So you had an opportunity to see that at  
5 Mr. Colvin's deposition, correct?

6 A. Yes.

7 Q. And it says: Burn all niggers, white  
8 power, Trump 2020.

9 Had you ever seen this in the bathrooms at  
10 the Sphere project in --

11 A. I never seen this.

12 Q. Excuse me?

13 A. No.

14 Q. What type of graffiti did you see?

15 MR. ROSENTHAL: Objection, vague and  
16 ambiguous.

17 THE WITNESS: It could go between a range  
18 from this -- it can go Hispanic. It could be  
19 something about whites. Numerous.

20 BY MR. MARKS:

21 Q. All right. Let's talk about racial  
22 anti-black graffiti.

23 What types of anti-black graffiti did you  
24 see there?

25 MR. ROSENTHAL: Objection, vague and

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1 ambiguous.

2 BY MR. MARKS:

3 Q. In the bathrooms at the Sphere project.

4 MR. ROSENTHAL: Objection, vague and  
5 ambiguous, overbroad.

6 BY MR. MARKS:

7 Q. You can answer.

8 A. There was all types.

9 Q. Just give me an example.

10 MR. ROSENTHAL: Objection, vague and  
11 ambiguous, overbroad.

12 THE WITNESS: I assume it's something like  
13 this.

14 BY MR. MARKS:

15 Q. So something like you this you saw in the  
16 bathrooms at the Sphere project in 2019/2020; is  
17 that correct?

18 A. Yes.

19 Q. And you're saying you saw this  
20 approximately -- very frequently on the Sphere  
21 project; is that right?

22 MR. ROSENTHAL: Objection, misstates  
23 testimony.

24 BY MR. MARKS:

25 Q. Sir, you can answer.

1                   **You've see this type of anti-black comments**  
2                   **in the bathrooms at the Sphere project frequently?**

3                   MR. ROSENTHAL: Objection, misstates  
4                   testimony.

5                   BY MR. MARKS:

6                   **Q. You can answer.**

7                   A. I wasn't referring to just black. It's  
8                   black, Hispanic, Caucasian.

9                   And, yes, it happens on and off. It's  
10                  reported to safety. When the people in charge of  
11                  the restrooms come, they take care of it.

12                  **Q. Okay. What did they say -- we're going to**  
13                  **go through each group.**

14                  **What type of comments did they make about**  
15                  **black people?**

16                  A. I don't --

17                  MR. ROSENTHAL: Objection.

18                  THE WITNESS: -- recall.

19                  MR. ROSENTHAL: Stop. Let me state my  
20                  objection first and then you can speak. Okay?

21                  THE WITNESS: All right.

22                  MR. ROSENTHAL: Objection, vague and  
23                  ambiguous, overbroad.

24                  BY MR. MARKS:

25                  **Q. You can answer.**

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1 A. I don't recall.

2 Q. Was it similar to this?

3 MR. ROSENTHAL: Objection, vague and  
4 ambiguous.

5 BY MR. MARKS:

6 Q. You can answer.

7 A. No.

8 Q. You didn't see other comments similar to  
9 this?

10 MR. ROSENTHAL: Objection, vague and  
11 ambiguous.

12 BY MR. MARKS:

13 Q. You can answer.

14 A. I don't recall.

15 Q. What about Hispanic people?  
16 What did you recall?

17 MR. ROSENTHAL: Objection, vague and  
18 ambiguous.

19 THE WITNESS: I don't recall.

20 BY MR. MARKS:

21 Q. Negative comments about Hispanic people?

22 MR. ROSENTHAL: Objection, vague and  
23 ambiguous.

24 BY MR. MARKS:

25 Q. You can answer.

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1 A. Yes.

2 Q. What did you recall seeing?

3 A. I don't recall.

4 Q. What were the comments about white people?

5 A. I don't recall.

6 MR. MARKS: Let's put up Exhibit 9.

7 (Exhibit 9 Graffiti introduced.)

8 BY MR. MARKS:

9 Q. All right. Did you ever see comments such  
10 as Exhibit 9 anywhere at the Sphere project in 2019  
11 and 2020?

12 A. Yes.

13 Q. On how many occasions?

14 A. I don't recall.

15 Q. Was it frequent?

16 MR. ROSENTHAL: Objection, vague and  
17 ambiguous.

18 BY MR. MARKS:

19 Q. You can answer.

20 A. I'm going to say it's on and off. It's  
21 ongoing.

22 Q. And what did you -- when you saw it, what  
23 did you do about it?

24 A. Report it to safety.

25 Q. Do you know what safety did about it?

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1           A.     They would get ahold -- they would -- M.J.  
2     Dean has a policy. They don't deal with any type of  
3     discrimination.

4           **Q.     So what did they do?**

5           A.     So there would be meetings about it, and  
6     they would get it -- they would have it cleaned up.

7           **Q.     Was there ever a discussion regarding**  
8     **anti-discrimination policies?**

9                     **Did the company ever call a meeting to**  
10    **discuss this type of graffiti on the job?**

11          A.     There has been.

12          **Q.     When was the last one?**

13          A.     I don't recall.

14          **Q.     Do you know how many meetings they ever**  
15    **had?**

16                    MR. ROSENTHAL: Objection, vague and  
17    ambiguous.

18    BY MR. MARKS:

19          **Q.     You can answer.**

20          A.     No.

21          **Q.     During 2020, was there white supremacy talk**  
22    **relating to Trump's reelection?**

23                    MR. ROSENTHAL: Objection, vague and  
24    ambiguous.

25                    THE WITNESS: Yes.



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1 BY MR. MARKS:

2 Q. Were there people having swastikas tattooed  
3 on themselves?

4 MR. ROSENTHAL: Objection --

5 THE WITNESS: No.

6 MR. ROSENTHAL: -- vague and ambiguous.

7 BY MR. MARKS:

8 Q. What was the nature of the white supremacy  
9 talk on the Sphere project in 2020?

10 A. Trump supporters.

11 Q. Right. But what did they say regarding  
12 white supremacy?

13 MR. ROSENTHAL: Objection, vague and  
14 ambiguous.

15 THE WITNESS: I don't recall.

16 BY MR. MARKS:

17 Q. But you did hear comments?

18 A. Yes.

19 Q. What did you do when you heard those  
20 comments?

21 MR. ROSENTHAL: Objection, vague and  
22 ambiguous.

23 BY MR. MARKS:

24 Q. You can answer.

25 A. The comments --

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1 Q. I didn't hear your answer.

2 A. It went in one ear and out the other.

3 Q. So you didn't do anything about the  
4 comments?

5 A. Comments from people?

6 Q. Yeah. Comments? White supremacist's  
7 comments?

8 MR. ROSENTHAL: Objection, vague and  
9 ambiguous.

10 BY MR. MARKS:

11 Q. Did you do anything when you heard  
12 employees of M.J. Dean making white supremacy  
13 comments?

14 MR. ROSENTHAL: Objection, lacks  
15 foundation, misstates testimony.

16 THE WITNESS: No. No.

17 BY MR. MARKS:

18 Q. When's the last time you saw anti-black  
19 graffiti at the Sphere project?

20 How long ago?

21 A. Two months.

22 Q. And what was the nature of the graffiti?  
23 What did it say?

24 A. I don't recall.

25 Q. Was it similar to what I showed you?

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1 MR. ROSENTHAL: Objection, vague and  
2 ambiguous.

3 THE WITNESS: I don't recall.

4 BY MR. MARKS:

5 Q. You can answer.

6 A. I don't recall.

7 Q. You don't recall what you saw?

8 A. No.

9 Q. You're aware that in November of 2019,  
10 Parnell Colvin accused you of using the N-word  
11 directed to him; isn't that correct?

12 A. Yes.

13 Q. And you denied using it, correct?

14 A. Yes.

15 Q. And were you and Mr. Colvin separated after  
16 that point in time?

17 A. Yes.

18 MR. ROSENTHAL: Objection, vague and  
19 ambiguous.

20 BY MR. MARKS:

21 Q. You can answer.

22 A. Yes.

23 Q. And he was transferred to another area,  
24 correct?

25 A. Yes.

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1 Q. And that was the yard, correct?

2 A. Yes.

3 Q. And was that done by Mr. Thomason?

4 A. Yes.

5 Q. And when Mr. Colvin was laid off, did you  
6 tell him he was laid off?

7 A. I'm the one that brought the checks.

8 Q. Did you specifically tell him, You're laid  
9 off?

10 A. Yes.

11 Q. Even though you're saying you had nothing  
12 to do with the decision to lay him off?

13 A. It was not my decision.

14 Q. And you're saying you had nothing to do  
15 with the decision to not bring him back?

16 A. I did not.

17 Q. Okay.

18 MR. MARKS: Rob, I think this would be a  
19 good time to take a ten-minute break so I can  
20 communicate with my client, and then we'll come back  
21 and finish up.

22 (Thereupon, a break was taken.)

23 BY MR. MARKS:

24 Q. Mr. Gutierrez, isn't it true you told  
25 Mr. Colvin that he was terminated and then he got

1 his paycheck the next day?

2 A. I don't recall.

3 Q. You testified before the break you recall  
4 he got terminated and you gave him the paycheck the  
5 same date.

6 Now you don't recall?

7 A. I gave him the checks the day he was laid  
8 off. You stated the next day.

9 Q. Wasn't he laid off on one day and he got  
10 his check the next day?

11 A. He should have received the checks the same  
12 day.

13 Q. Did you ever complain about the graffiti in  
14 the bathrooms to safety?

15 Did you personally ever complain?

16 A. Yes.

17 Q. And do you know whether safety ever  
18 investigated?

19 A. Yes.

20 Q. And did they ever find out who did the  
21 graffiti?

22 A. I don't know.

23 Q. Do you know who at the safety department  
24 investigated?

25 A. Paul Rosequist.

1 Q. Is he still employed there?

2 A. Yes.

3 Q. After the graffiti and the white supremacy  
4 talk, were there actually meetings with the  
5 employees of Dean, meaning the laborers, to discuss  
6 what had happened?

7 MR. ROSENTHAL: Objection, vague and  
8 ambiguous.

9 BY MR. MARKS:

10 Q. You can answer.

11 A. Yes.

12 MR. ROSENTHAL: Hold on. And calls for  
13 speculation.

14 BY MR. MARKS:

15 Q. And when were -- do you recall the dates of  
16 those meetings?

17 A. I don't know.

18 Q. Who conducted those meetings?

19 A. Safety director.

20 Q. And do you recall what he said?

21 A. We have weekly safety meetings. If  
22 discrimination of any type arises, they bring it up  
23 in a safety meeting and say it's not tolerated. And  
24 if it's found out who, they would be terminated.

25 Q. Are these safety meetings with the actual

1     **laborers or just with supervisors?**

2           A.     These are with laborers, employees of the  
3     company.

4           **Q.     Do you recall the safety manager actually**  
5     **stating -- discussing the graffiti incidents and**  
6     **indicating employees would be terminated?**

7           A.     When --

8                   MR. ROSENTHAL:   Objection, vague and  
9     ambiguous, calls for speculation.

10    BY MR. MARKS:

11           **Q.     You can answer.**

12           A.     When?

13           **Q.     At any point in time in 2019 or 2020.**

14           A.     Yes.

15           **Q.     And have those safety meetings regrading**  
16     **graffiti continued in 2021?**

17           A.     Yes.

18           **Q.     Now, were any memos or notices sent to the**  
19     **actual laborers about the graffiti?**

20           A.     There's a safety sheet that comes out.   And  
21     when they do the meeting, it's spoke upon and  
22     everybody signs the sheet, the safety sheet.

23           **Q.     So why do you think that safety is**  
24     **discussing the graffiti that continues to be**  
25     **discriminatory graffiti on the jobsite at Sphere?**

1                   **Why do you think that's happening?**

2                   MR. ROSENTHAL: Objection, calls for  
3 speculation, vague and ambiguous.

4 BY MR. MARKS:

5                   **Q. You can answer.**

6                   MR. MARKS: All right. I'll pass the  
7 witness.

8                   MR. ROSENTHAL: Witness said, "no."  
9 I don't have any questions.

10                  MR. MARKS: All right. And you'll take  
11 care of the reading and signing with this witness?

12                  MR. ROSENTHAL: Yes.

13                                   - - - - -

14

15                   (Proceedings concluded at 11:17 a.m.)

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CERTIFICATE OF REPORTER


STATE OF NEVADA     )  
   )   SS:  
COUNTY OF CLARK    )

I, Jackie Jennelle, RPR, CCR #809, Clark County, State of Nevada, do hereby certify: That I reported the video conference deposition of KEVIN GUTIERREZ, commencing on THURSDAY, JULY 29, 2021, at 10:00 a.m.

That prior to being deposed, the witness was duly sworn by me to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript is a complete, true and accurate transcription of my said shorthand notes.

I further certify that I am not a relative or employee of counsel, of any of the parties, nor a relative or employee of the parties involved in said action, nor a person financially interested in the action.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 9th day of August, 2021.

  
\_\_\_\_\_  
JACKIE JENNELLE, RPR, CCR #809

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## **EXHIBIT 12**

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

PARNELL COLVIN,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CASE NO.:
	)	2:20-cv-01765-APG-EJY
M.J. DEAN CONSTRUCTION,	)	
INC.,	)	
	)	
Defendant.	)	

**CERTIFIED  
TRANSCRIPT**

VIDEO CONFERENCE DEPOSITION OF JOHN THOMASON  
LAS VEGAS, NEVADA  
THURSDAY, JULY 29, 2021

REPORTED BY: JACKIE JENNELLE, RPR, CCR #809  
JOB #416110

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JOHN THOMASON, 07/29/2021

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1 APPEARANCES (ALL VIA VIDEO CONFERENCE):

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I N D E X

WITNESS: JOHN THOMASON

EXAMINATION

PAGE

BY MR. MARKS

4

EXHIBITS INTRODUCED

EXHIBIT

PAGE

Exhibit 6 Employee Incident Form  
Exhibit 7 E-Mail  
Exhibit 8 Graffiti  
Exhibit 9 Graffiti

19  
22  
24  
26

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LAS VEGAS, NEVADA

THURSDAY, JULY 29, 2021; 2:00 p.m.

-o0o-

Thereupon--

JOHN THOMASON,

was called as a witness, and having been first duly  
sworn, was examined and testified as follows:

EXAMINATION

BY MR. MARKS:

**Q. Could you state your name, please?**

A. John Wesley Thomason.

MR. MARKS: And, Rob, we're agreeing to do  
this by Zoom based on the uptick in COVID; is that  
correct?

MR. ROSENTHAL: That's correct.

MR. MARKS: And I wasn't aware that  
Mr. Thomason had any issues. If he can't hear me at  
some point, you can either tell me or he can raise  
his hand or something.

We'll see what we can do; is that okay?

MR. ROSENTHAL: Do you understand that,  
Mr. Thomason?

THE WITNESS: Yes, sir.

BY MR. MARKS:

**Q. All right. What's your business address,**

1     **sir?**

2           A.     5055 West Patrick Lane, Suite 101.

3           **Q.     And who do you work for?**

4           A.     M.J. Dean Construction.

5           **Q.     How long have you worked there?**

6           A.     Since 1995.

7           **Q.     And what is your current title?**

8           A.     Director of field of operations.

9           **Q.     And could you tell me what that entails,**  
10    **what your job entails?**

11          A.     I am to create schedules, work with the  
12    owners, manage the construction sites, manage the  
13    superintendents and the supervision.

14          **Q.     And how long have you had that title,**  
15    **director of field operations?**

16          A.     Four years.

17          **Q.     And prior to that job, did you have another**  
18    **job at Dean Construction?**

19          A.     Yes, sir.

20          **Q.     And what was that?**

21          A.     Superintendent.

22          **Q.     And what was the job of superintendent?**

23          A.     To manage specific jobs.

24          **Q.     Is it fair to say that you worked your way**  
25    **up to more responsible positions during the 26 years**



1     **you've worked for Dean Construction?**

2         A.     Yes, sir.

3         **Q.     What was -- what did you start at in 1995?**

4         A.     As a union carpenter.

5         **Q.     And how long were you a union carpenter**  
6 **before you got into management?**

7         A.     With M.J. Dean, sir?

8         **Q.     Yes.**

9         A.     One year.

10        **Q.     Prior to Dean, did you work at other**  
11 **construction companies?**

12        A.     Yes, sir.

13        **Q.     And where did you work prior to Dean?**

14        A.     What year, sir, are you looking for?

15        **Q.     Before 1995.**

16               **What other companies did you work for?**

17        A.     I worked for Sequoia Construction. I  
18 worked for Marnell Corrao and I worked for Grove  
19 Construction. And I've worked for Sletten  
20 Construction.

21        **Q.     So how long have you been in the**  
22 **construction industry?**

23        A.     Since 1986.

24        **Q.     Prior to starting in the construction**  
25 **industry, what was your educational background?**

1 A. High school. I didn't finish high school,  
2 but 12th grade.

3 Q. And what -- where did you go to high  
4 school?

5 A. El Dorado High School.

6 Q. Okay. And that's in the Las Vegas area?

7 A. Yes, sir.

8 Q. And were you in management at any company  
9 prior to Dean?

10 A. No, sir.

11 Q. So you mentioned Sequoia, Marnell, Grove,  
12 and Sletten, I think.

13 Were you a union carpenter for those  
14 companies?

15 A. Yes, sir.

16 Q. So when you got into management at Dean,  
17 after which would have been around 1996, did you  
18 hold any positions prior to your position of  
19 superintendent?

20 A. Yes, sir. General foreman.

21 Q. Okay. And do you recall how many years you  
22 were a general foreman?

23 A. Less than a year.

24 Q. So after general foreman, were you promoted  
25 to superintendent?

1 A. Yes, sir.

2 Q. As I understand it in layman's terms, a  
3 superintendent essentially runs one project?

4 A. Yes, sir.

5 Q. And your current job of director of field  
6 operations, you're in charge of all the projects  
7 that Dean has; is that right?

8 A. Right now I'm in charge of one project.

9 Q. What project is that?

10 A. The Madison Square Garden Sphere.

11 Q. Okay. But I thought you said as director  
12 of field operations, I thought you said you were in  
13 charge of all the projects?

14 A. Before the Madison Square Garden Sphere I  
15 was in charge of all projects. Once the Sphere  
16 started, I was asked to be the superintendent for  
17 that particular project.

18 Q. And is that because this is a big project,  
19 the MSG Sphere?

20 A. Yes, sir.

21 Q. All right. And when did that project  
22 start?

23 A. November, December 2018.

24 Q. And that project is -- the owner of that  
25 Dolan, who owns Madison Square Garden?

1 MR. ROSENTHAL: Objection, calls for  
2 speculation.

3 BY MR. MARKS:

4 Q. Sir, you can answer even though there's  
5 objections, unless he instructs you not to answer.

6 Do you understand that?

7 A. Yes, sir.

8 Q. Do you know who the owner is of the Sphere  
9 project?

10 A. I believe the owner is Mr. James Dolan.

11 Q. Okay. And MSG stands for Madison Square  
12 Garden, the same Madison Square Garden as in New  
13 York City, correct?

14 A. Yes, sir.

15 Q. All right. This could be a good time to go  
16 over the ground rules.

17 Did you have a chance to talk to your  
18 attorney about the rules of the road in a  
19 deposition?

20 A. Yes, sir.

21 Q. In addition to what he told you, I'll  
22 summarize the rules. The oath that the court  
23 reporter gave you is the same oath as if we were in  
24 court.

25 Do you understand that?

1 A. Yes, sir.

2 Q. So even though we're on a Zoom setting,  
3 you're under the same obligation to tell the truth  
4 and the same penalties of perjury if you fail to  
5 tell the truth here today.

6 Do you understand?

7 A. Yes, sir.

8 Q. The questions and answers and any comments  
9 by your attorney will be typed up in a booklet form  
10 in the next two to three weeks.

11 You'll have an opportunity to read and sign  
12 the booklet if you choose.

13 Do you understand?

14 A. Yes, sir.

15 Q. And if you want to make changes, you're  
16 allowed under the rules to make changes. However,  
17 if you made a change of a major nature and the  
18 matter went to trial, the attorneys could comment on  
19 your change.

20 Do you understand?

21 A. Yes, sir.

22 Q. So if it was a car accident and today you  
23 said the traffic light was green and you change your  
24 testimony later to yellow, the attorneys could  
25 comment and that could affect your credibility or

1 believability.

2 Do you understand?

3 A. Yes, sir.

4 Q. Your attorney is allowed to object, so let  
5 him object. If he doesn't say anything beyond that,  
6 you would be obligated to still answer.

7 Do you understand?

8 A. Yes, sir.

9 Q. And that's because there's no judge. It's  
10 just the attorneys, my client, and you. And any  
11 objections would have to be discussed at a later  
12 date. So we're going to try to move it along by  
13 just letting him object and continuing your answer.

14 Do you understand?

15 A. Yes, sir.

16 Q. Okay. Did you review anything in  
17 preparation for the deposition?

18 A. It's been -- yes.

19 Q. What did you review?

20 A. Earlier this week.

21 Q. What?

22 What documents did you review?

23 A. Just daily reports and witness statements,  
24 just to refresh my memory.

25 Q. Daily reports?

1 A. Well, layoff sheets, witness statements,  
2 just trying to refresh my memory.

3 Q. What witness statements did you review?

4 A. M.J. Dean employee witness statements.

5 Q. Do you know how many witness statements?

6 A. I believe three.

7 Q. Who were they of?

8 A. Parnell Colvin, Kevin Gutierrez, David  
9 McGrandy [phonetic]. And I'm sorry, there was a  
10 fourth one, Ricky Flores.

11 Q. And were those witness statements relating  
12 to the N-word incident?

13 A. Yes.

14 Q. And what layoff sheets did you review?

15 A. The Madison Square Garden Sphere layoffs  
16 due to the shutdown.

17 Q. And are these documents you kept at your  
18 office?

19 A. Yes, sir.

20 Q. Do you know whether those have been  
21 produced in this case through the attorneys?

22 A. I do not.

23 Q. Did you review any other documents?

24 A. No.

25 Q. Have you ever had a deposition taken

1 **before?**

2 A. Yes, sir.

3 **Q. How long ago?**

4 A. Probably 2003, 2004, somewhere around  
5 there, approximately.

6 **Q. And was that in connection with your job at**  
7 **Dean?**

8 A. I'm sorry, sir. I don't understand your  
9 question.

10 **Q. What type of case was it that you had your**  
11 **deposition taken?**

12 A. A crane operator got hurt on a weekend.

13 **Q. So it was in connection with your**  
14 **responsibilities for Dean?**

15 A. No, sir.

16 **Q. It was at another company?**

17 A. No. I was still with Dean.

18 **Q. Were you a witness to it?**

19 A. No, sir.

20 **Q. Why was your deposition taken?**

21 A. I believe it was taken because I was the  
22 superintendent on the project.

23 **Q. So why was that not related to your**  
24 **employment with Dean?**

25 MR. ROSENTHAL: I'm going to object that it



1 misrepresents testimony.

2 BY MR. MARKS:

3 Q. There was an accident -- okay. Maybe I'm  
4 not understanding. Maybe you're not understanding  
5 me or I'm not understanding you.

6 You -- apparently there was an accident on  
7 the job where Dean was the contractor, correct?

8 A. Yes.

9 Q. And you were the superintendent?

10 A. Yes.

11 Q. So because you were the superintendent,  
12 somebody -- one of the attorneys wanted to depose  
13 you and get information; is that right?

14 A. I believe so, yes, sir.

15 Q. Okay. Is that your last deposition?

16 A. Yes, sir. My one and only.

17 Q. Okay. Have you ever testified in court?

18 A. No, sir.

19 Q. Okay. So let's come back to the Sphere  
20 project.

21 How long was the Sphere project planned?

22 How long was the construction timetable for  
23 the Sphere?

24 A. What part of the construction?

25 Q. The whole construction.

1 MR. ROSENTHAL: Objection, vague and  
2 ambiguous.

3 BY MR. MARKS:

4 Q. How long from the beginning of the project  
5 to completion?

6 A. From start to turnkey?

7 Q. Yeah.

8 A. 2019 to 2023.

9 Q. And what role was Dean?

10 Were you the general contractor?

11 MR. ROSENTHAL: Objection, vague and  
12 ambiguous.

13 BY MR. MARKS:

14 Q. You can answer.

15 A. M.J. Dean Construction was the concrete  
16 subcontractor, and they were a joint venture with  
17 AECOM Hunt as a minority partner.

18 Q. As a general?

19 A. As a -- we -- yes. We loan a component,  
20 some of our project management.

21 Q. Okay. And what role did you play in the  
22 project management?

23 A. I was the concrete superintendent.

24 Q. Okay. Now, prior to the Sphere project,  
25 did you know Parnell Colvin?

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1 A. No, sir.

2 Q. Okay. When did you first meet him?

3 A. I met him when he was hired on the job.

4 Q. And do you recall what year that was?

5 A. 2019.

6 Q. All right. Did you choose Kevin Gutierrez  
7 to be the general foreman of the project?

8 A. Yes, I did, for the laborers.

9 Q. Okay. By the way, do you have any  
10 ownership interest in M.J. Dean Construction?

11 A. I don't know how to answer that. I am --  
12 I've been with Mike basically since I got out of  
13 high school. So I am -- yes.

14 Q. Do you own stock in the company?

15 A. Yes, sir.

16 Q. And are you on the board of directors?

17 A. No, sir.

18 Q. What percent of the company -- what percent  
19 of the stock do you own?

20 A. Four percent.

21 Q. Are you the highest non-Dean family member  
22 shareholder of the company?

23 A. No, sir.

24 Q. Do you report to Mike Dean?

25 A. I report to Mike, yes, sir, and two others.

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1 Q. Who are the two others?

2 A. Perry Eiman and Todd Leitel.

3 Q. Are they owners of the company?

4 A. Yes.

5 Q. Are you the highest ranking non- -- well,  
6 you own shares.

7 Are you the highest ranking day-to-day  
8 manager of the company?

9 MR. ROSENTHAL: Objection, vague and  
10 ambiguous.

11 BY MR. MARKS:

12 Q. In the hierarchy of the company, is Mike  
13 Dean the president?

14 A. Yes, sir.

15 Q. And under Mike Dean in the hierarchy, who  
16 is next under Mike Dean?

17 A. Perry Eiman.

18 Q. And what about below him?

19 A. Todd Leitel.

20 Q. And then you?

21 A. Yes, sir.

22 Q. Okay.

23 A. Only -- sorry --

24 MR. ROSENTHAL: Go ahead.

25 THE WITNESS: Only over the field.

1 BY MR. MARKS:

2 Q. Field?

3 A. Yes, sir.

4 Q. Okay. Now, on the Sphere project, did you  
5 hire Parnell Colvin?

6 A. Yes, sir.

7 Q. Okay. And you're saying you hired him but  
8 didn't know him prior?

9 A. Yes.

10 Q. Did you have a way of checking his  
11 experience and what projects he had been on?

12 A. No.

13 Q. Okay. Now, was it brought to your  
14 attention by Parnell that he was called the N-word  
15 by Kevin Gutierrez?

16 A. I'm sorry. Could you please repeat that?

17 Q. At some point in time on the project, was  
18 it brought to your attention by Parnell Colvin that  
19 he was called the N-word by Kevin Gutierrez?

20 A. Parnell and AECOM Hunt George brought it to  
21 my attention. But -- that's it.

22 Q. And who is George from Hunt?

23 A. He's a safety director.

24 Q. Okay. And is there a policy at Dean, an  
25 anti-discrimination policy at Dean?

1 A. Yes.

2 Q. And that's contained in the code of safe  
3 practices and anti-drug and harassment policies?

4 A. It's in the handbook, sir. I can't quote  
5 exactly where it's at.

6 Q. Okay. It's in the employee handbook,  
7 correct?

8 A. Yes, sir.

9 Q. Okay. And Dean strives to maintain an  
10 environment free from discrimination and harassment,  
11 correct?

12 A. Zero tolerance.

13 Q. And that includes zero tolerance for race  
14 discrimination, correct?

15 A. If it's proven correct or proven that it  
16 happened, then, yes, sir.

17 Q. Okay. So isn't it true that Parnell did do  
18 a report in which he claimed that Kevin Gutierrez  
19 had called him the N-word, correct?

20 A. Parnell did do a statement with our safety  
21 director, site safety director, as well as the  
22 witness statements.

23 MR. MARKS: Let's -- Nicole, if you could  
24 put up Exhibit 6.

25 (Exhibit 6 Employee Incident Form introduced.)

1 BY MR. MARKS:

2 Q. So this is an employee incident  
3 investigation report that Parnell did on  
4 November 14th of 2019 where he accused Kevin  
5 Gutierrez of calling him the N-word.

6 You received a copy of this?

7 A. I was shown a copy, yes, sir.

8 Q. Who showed it to you?

9 A. Our site safety director, Paul.

10 Q. What is Paul's last name?

11 A. Paul Rosequist.

12 Q. When an employee makes a claim of race  
13 discrimination, how is that handled in M.J. Dean  
14 Construction company?

15 MR. ROSENTHAL: Objection, vague and  
16 ambiguous, incomplete hypothetical, calls for  
17 speculation.

18 MR. MARKS: Again, you can just say object  
19 to the form, Counsel. That's all you're allowed to  
20 do.

21 BY MR. MARKS:

22 Q. You're allowed to answer the question.

23 A. I'm sorry. Could you please repeat the  
24 question?

25 Q. The question is simply: When an employee

1     **such as Parnell Colvin makes a claim of race**  
2     **discrimination in 2019 or 2020 while working for**  
3     **M.J. Dean Construction, how is that complaint of**  
4     **discrimination handled?**

5           A.     An investigation is done. The witnesses  
6     that Parnell told us or told Paul heard the  
7     confrontation, witness statements were taken from  
8     them.

9           **Q.     Who did the investigation?**

10          A.     I'm sorry. Mr. Marks, can you repeat that?

11          **Q.     Who for M.J. Dean did the investigation?**

12          A.     Our site safety director, as I said  
13     earlier.

14          **Q.     And that's Mr. Rosequist?**

15          A.     Yes, sir.

16          **Q.     Did he ever reach -- write a report**  
17     **reaching conclusions regarding the investigation?**

18          A.     I don't recall.

19          **Q.     So you don't know what the outcome of the**  
20     **investigation was?**

21          A.     Verbally I talked to Paul. I don't recall  
22     seeing his report, but I did see the witness  
23     statements.

24          **Q.     What did Paul tell you verbally?**

25          A.     Verbally Paul said that the witness



1 statements do not go with what Mr. Colvin said.

2 Q. Didn't Mr. Colvin say it was one-on-one,  
3 there were no witnesses to the N-word other than  
4 him?

5 A. I don't recall that.

6 Q. Okay.

7 MR. MARKS: Nicole, could you please put up  
8 Exhibit 7?

9 (Exhibit 7 E-Mail introduced.)

10 BY MR. MARKS:

11 Q. Have you ever seen Exhibit 7 before?

12 A. No, sir.

13 Q. No?

14 A. I have not actually seen this, no, sir.

15 Q. And who is Tommy Glidewell?

16 A. He's our HR/IT. Tommy wears a lot of hats  
17 in our company.

18 Q. So he does HR?

19 A. Yes, sir.

20 Q. Did you ever see a report responding to  
21 this complaint by Parnell Colvin of April 24, 2020?

22 A. I don't recall ever seeing the report.

23 Q. Okay. Now, during the years 2019 through  
24 April of 2020, how many days a week were you at the  
25 Sphere project?

1 A. Who was at the Sphere project?

2 Q. I'm asking you how many days a week  
3 generally in 2019 through April of 2020 -- how many  
4 days a week were you personally at the Sphere?

5 A. Five days a week, six days a week.

6 Q. And was there an average number of hours  
7 per day you were there?

8 A. Ten. Ten hours a day.

9 Q. Okay. And you were in the area where Dean  
10 employees were working, correct?

11 A. I spent most of my time in the GC trailer  
12 and M.J. Dean's trailer.

13 Q. What is the GC trailer?

14 A. The general contractor's trailer.

15 MR. ROSENTHAL: Dan, could we get a full  
16 screen back so we can see you?

17 MR. MARKS: Yes.

18 Nicole, can you take down the exhibit.

19 THE WITNESS: Thank you, Mr. Marks. I  
20 appreciate that.

21 BY MR. MARKS:

22 Q. Okay. All right. I was asking GC, that  
23 the general was the Hunt trailer?

24 A. Yes, sir.

25 Q. Okay. But my question is broader. I

1 assume you went out and actually walked the site and  
2 saw the progress of construction at some points  
3 during the day, correct?

4 A. Yes, sir.

5 Q. Okay. While you were out on the jobsite  
6 itself, did you ever hear white supremacist  
7 comments?

8 A. No, sir, I did not.

9 Q. Did you ever hear anti-African-American,  
10 negative comments about black employees?

11 A. No, sir.

12 Q. Okay. Did you ever hear the N-word being  
13 used?

14 A. No, sir.

15 Q. Did you ever hear negative comments about  
16 Hispanic employees?

17 A. No, sir.

18 Q. All right. Now, were you -- did you ever  
19 become aware of racial discriminatory comments about  
20 African-Americans in the bathrooms of the worksite  
21 at the Sphere project?

22 A. No, sir.

23 MR. MARKS: All right. Let's put up  
24 Exhibit 8.

25 (Exhibit 8 Graffiti introduced.)

1 BY MR. MARKS:

2 Have you ever seen that graffiti in a  
3 bathroom at the Sphere project in an area that Dean  
4 employees were using the bathroom?

5 A. No, sir.

6 Q. Were you ever advised that that graffiti  
7 was in the bathroom?

8 A. No, sir.

9 Q. So I take it you never had any meetings  
10 with the employees telling them not to use the  
11 N-word, correct?

12 A. Our supervision has weekly safety meetings.  
13 We call them toolbox meetings. And our company  
14 policies, whatever the topic may be, all kinds of  
15 items including racial slurs, comments, all that is  
16 brought up. But I personally do not attend those  
17 meetings.

18 Q. So you don't know whether or not the use of  
19 racial slurs was ever discussed at the safety  
20 meetings of your own personal knowledge, correct?

21 A. Correct.

22 Q. And you said you never heard any comments  
23 of white power, white supremacy, the N-word during  
24 the time you were out at the project?

25 A. Sir, I've already answered that question.

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1 I have not.

2 Q. Okay. And no one ever told you there was  
3 anti-African-American employee graffiti in the  
4 bathrooms?

5 You've never heard that until today?

6 A. That is correct.

7 Q. So no one ever brought that to your  
8 attention in the Dean company at all until I'm  
9 asking you about it today?

10 A. Sir, there's multiple subcontractors on  
11 that jobsite, not just M.J. Dean. So it's a --  
12 there's 800 men that work on that job and a portion  
13 of that is M.J. Dean.

14 Q. Right. I'm just asking if it was brought  
15 to your attention --

16 A. I've already answered that, no.

17 Q. -- that the graffiti in Exhibit 8 was in a  
18 bathroom that was used by Dean employees, yes or no?

19 A. No.

20 MR. MARKS: All right. Could we put up  
21 Exhibit 9?

22 (Exhibit 9 Graffiti introduced.)

23 BY MR. MARKS:

24 Q. Did you ever see graffiti depicted in  
25 Exhibit 9 at the Sphere worksite?

1 A. No, sir.

2 Q. Now, if you had seen graffiti like this,  
3 would you have had any sort of meeting where you  
4 personally addressed the Dean employees and/or the  
5 other subcontractors?

6 MR. ROSENTHAL: Objection, incomplete  
7 hypothetical, calls for speculation, vague and  
8 ambiguous.

9 BY MR. MARKS:

10 Q. You can answer.

11 A. If I heard of anything like this or seen  
12 anything like that, would I address it?

13 Q. Yeah.

14 A. Immediately.

15 Q. Okay. And you didn't address it because no  
16 one ever told you about it?

17 A. I've never seen this or heard of this.

18 Q. So Mr. Rosequist never told you about it?

19 A. I don't know if Mr. Rosequist knew about  
20 this.

21 Q. Well, nobody ever told you about it,  
22 correct?

23 A. No.

24 Q. This violates the Dean anti-discrimination  
25 policy, doesn't it?

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1 A. I'm sorry, sir?

2 Q. These comments violate Dean's  
3 anti-discrimination policy, correct?

4 A. Yes, sir.

5 Q. Now, do you know a guy named Dave Muti,  
6 M-U-T-I is the spelling?

7 A. Yes.

8 Q. And what was his position in -- relating to  
9 the Sphere project?

10 A. Dave Muti was my acting site  
11 superintendent.

12 MR. ROSENTHAL: Could we get you back on  
13 full screen again, please?

14 Thank you.

15 BY MR. MARKS:

16 Q. And my understanding is he has health  
17 problems now?

18 A. Yes, sir.

19 Q. And is he not working?

20 A. No, sir.

21 Q. And as your site superintendent, he would  
22 be closer to the actual employees working in the  
23 field than you would be?

24 MR. ROSENTHAL: Objection, vague and  
25 ambiguous.

1 BY MR. MARKS:

2 Q. You can answer.

3 A. For that job duty, site civil work, yes,  
4 Dave Muti would be closer to the men in the field  
5 for that.

6 Q. In the hierarchy, it would be Kevin  
7 Gutierrez as the foreman, then Dave Muti, and then  
8 you in the chain of command?

9 A. No, sir.

10 Q. All right. What would be the chain of  
11 command?

12 A. I'm sorry. Mr. Marks, did you start at the  
13 bottom and go up?

14 Q. Yes.

15 A. Yes, sir. Well, it would be -- it would be  
16 myself, our site superintendents, whether -- wait --  
17 this -- this -- yes, that would be the pecking  
18 order.

19 Q. And as -- again, your title, you were the  
20 general superintendent for this project, this Sphere  
21 project, correct?

22 A. Yes.

23 Q. So you were the top Dean employee on the  
24 site for the Sphere project?

25 A. Yes.



1 Q. Okay. So essentially, all major decisions  
2 had to go through you; is that right?

3 MR. ROSENTHAL: Objection, vague and  
4 ambiguous.

5 BY MR. MARKS:

6 Q. Isn't that true?

7 A. Yes.

8 Q. And Dean as a co -- you said you were  
9 co-general contractor with AECOM Hunt, correct?

10 A. Our men were loaned to AECOM Hunt to help  
11 manage the project.

12 Q. But I think you said you were in a joint  
13 venture with AECOM Hunt earlier.

14 As co-general contractors you/Dean/AECOM  
15 Hunt would have authority over the other subs,  
16 correct?

17 A. No, sir.

18 Q. Who would have authority over the other  
19 subs?

20 A. AECOM Hunt.

21 Q. Okay. But if you saw graffiti in an area  
22 where another sub was working, racial discriminatory  
23 statements, the use of the N-word, you would  
24 immediately bring it to AECOM Hunt's attention,  
25 wouldn't you?

1 MR. ROSENTHAL: Objection, incomplete  
2 hypothetical, calls for speculation.

3 You can answer.

4 THE WITNESS: We are talking about the  
5 Madison Square Garden Sphere?

6 BY MR. MARKS:

7 Q. Correct, yes.

8 A. Okay. If I seen anything in the site or on  
9 the site, I would take it to AECOM Hunt's safety  
10 personnel.

11 Q. All right. But since you didn't see  
12 anything, you did not take any relating to  
13 Mr. Colvin to AECOM Hunt's personnel, correct?

14 MR. ROSENTHAL: Objection, vague and  
15 ambiguous.

16 THE WITNESS: I'm not sure what you're  
17 talking about, sir.

18 BY MR. MARKS:

19 Q. You never brought to AECOM Hunt's attention  
20 any -- the presence of any racially discriminatory  
21 graffiti, correct?

22 A. I never seen any.

23 Q. Okay. Now, you had conversations with  
24 Parnell one-on-one?

25 A. No, sir.

1 Q. You never had a conversation with Parnell  
2 Colvin one-on-one?

3 A. No, sir.

4 Q. Did you ever have a conversation with  
5 Parnell where you said, I'm not a racist?

6 MR. ROSENTHAL: Dan, you faded out there.  
7 Can you repeat that?

8 BY MR. MARKS:

9 Q. I'll repeat it. Can you hear me? I'll  
10 repeat it.

11 A. Yes, sir.

12 Q. Did you ever have a conversation with  
13 Parnell Colvin where you told him, I'm not a racist.  
14 BB King is a good friend of mine?

15 A. No.

16 Q. Anything like that?

17 A. No.

18 Q. And you're saying you never had any  
19 conversations one-on-one with Parnell?

20 A. No, I have not.

21 Q. Okay. Now, is it true that the Sphere  
22 project never totally stopped construction even  
23 during COVID?

24 A. That is not true.

25 Q. For how long did the Sphere project stop?

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1 A. Probably a week.

2 Q. Okay. And after the week, the Sphere  
3 project started up again, correct?

4 A. Not exactly.

5 Q. Did construction continue?

6 A. A portion of construction continued.

7 Q. Did the Dean portion continue?

8 A. Not all of Dean's work continued.

9 Q. Did some of Dean's work continue?

10 A. Yes, sir.

11 Q. Now, what percentage of completion was the  
12 project in April of 2020?

13 A. Of Dean's portion?

14 Q. No. Of the whole project.

15 A. Five percent.

16 Q. What percentages of completion is the  
17 project right now?

18 A. Approximately 20 percent.

19 Q. So four times has happened since April of  
20 2020, correct?

21 A. I'm sorry, sir, more time?

22 Q. No. I'm saying four times the completion  
23 has gone on from April of 2020 to July of '21,  
24 correct?

25 A. All trades?

1 Q. Yes.

2 A. Yes.

3 Q. You can see the Sphere project from the law  
4 offices that you're in, correct?

5 A. Yes, sir. I'm down there every day.

6 Q. And you believe that the project is going  
7 to be completed by mid-'23?

8 A. Third quarter of '23, yes, sir.

9 Q. And by mid quarter of '23, Dean will have  
10 completed all of the work they were contracted to  
11 do, correct?

12 A. Dean will complete what they are contracted  
13 to do the first quarter of next year, 2022.

14 Q. So regarding the pandemic, while the  
15 pandemic slowed construction for a time, obviously  
16 Dean was still going to complete all the work to  
17 complete the Sphere project that they contracted to  
18 complete, correct?

19 A. No, sir.

20 Q. So there was work that Dean was going to do  
21 that went to other construction companies?

22 A. The project was redesigned, so a lot of  
23 Dean's work was taken from M.J. Dean.

24 Q. And who did it go to?

25 A. To W&W Steel.

1 Q. To who?

2 A. W&W Steel.

3 Q. Okay. But the week pause was in April --  
4 was the week pause in March or April of 2020?

5 Do you recall?

6 A. Due to the COVID shutdown?

7 Q. Yeah.

8 A. It was in mid-April.

9 Q. Okay. After the week, Dean rehired people,  
10 correct?

11 A. We were given direction by Madison Square  
12 Garden and AECOM Hunt on what we could finish and  
13 what we could do. And we had to bring some of the  
14 guys back, yes, sir.

15 Q. And do you know how many employees you  
16 brought back?

17 A. Approximately 200.

18 Q. And are you still doing construction, as we  
19 speak, right now in July of '21?

20 A. M.J. Dean?

21 Q. Yes.

22 A. Yes, sir.

23 Q. So after the week pause in April of '20,  
24 Dean continued to do construction for the rest of  
25 '20. You were planning on doing construction for

1 all of 2021 and into the first quarter of 2022,  
2 correct?

3 A. Yes.

4 Q. So that means that from April of 2020 to  
5 the end of the first quarter of 2022, there would be  
6 approximately two years of construction, correct?

7 A. For M.J. Dean Construction?

8 Q. Is that right?

9 A. For M.J. Dean concrete construction?

10 Q. Yeah.

11 A. Yes, sir.

12 Q. So how -- and how many employees does Dean  
13 have out there right now?

14 A. 35.

15 Q. Okay. And what type of employees are they?

16 A. Carpenters, laborers, and finishers.

17 Q. Now, in April of 2020, who made the  
18 decision for that week who to lay off?

19 A. I did.

20 Q. And are you saying everybody was laid off  
21 or a skeleton staff stayed?

22 A. May I explain?

23 Q. Yeah.

24 A. Okay. We were given direction on April 1st  
25 that the jobsite would be shut down by April 15th,

1 and at that time we had to finish a couple concrete  
2 pours, safe everything off, and remove all employees  
3 from the site.

4 So April 2nd, we started the layoffs. We  
5 could not send 500 layoffs to our office in one day,  
6 so we phased it out over the next ten days.

7 Q. And -- but didn't you keep materials in the  
8 yard?

9 A. I'm sorry, sir, what yard?

10 Q. The yard at the Sphere where you keep  
11 materials and equipment.

12 A. We had to -- we were directed to haul  
13 everything off the site.

14 Q. Did you actually do it?

15 A. No, sir.

16 Q. Did you leave equipment and materials in  
17 the yard?

18 A. Yes.

19 Q. And wasn't -- isn't there the necessity for  
20 an employee to be in the yard to make sure those  
21 materials aren't tampered with?

22 A. No, sir.

23 Q. So you had nobody watching the materials in  
24 the yard?

25 A. Besides MSG Sphere security. There was no



1 reason for M.J. Dean employees to be out in the  
2 yard.

3 Q. After the week, did you start rehiring  
4 employees for M.J. Dean?

5 A. Yes.

6 Q. And you rehired laborers, correct?

7 A. We rehired carpenters and laborers, yes,  
8 sir.

9 Q. And you said you rehired up to 200  
10 employees, correct?

11 MR. ROSENTHAL: Objection, misstates  
12 testimony.

13 MR. MARKS: No, it doesn't.

14 BY MR. MARKS:

15 Q. But you can answer.

16 Isn't that correct?

17 A. I'm sorry. Could you please repeat that?

18 Q. After the week was over, you obviously went  
19 back to work and you hired laborers and carpenters,  
20 correct?

21 A. Yes.

22 Q. And did you make the decision who to  
23 rehire?

24 A. I made the decision on how many employees  
25 to rehire.

1           **Q. Did you make the decision on which of the**  
2           **employees to rehire?**

3           A. I did not make the decision on which. I  
4           left that up to my superintendents.

5           **Q. And who made the decision on which**  
6           **employees to rehire?**

7           A. For which area, sir?

8           **Q. The laborers.**

9           A. The laborers was done by my  
10          superintendents.

11          **Q. I don't know who they are.**

12               **Could you give me a name of who they are?**

13          A. The job was -- it was five jobs in one job.  
14          I had David McGrandy on Core D. I had Fernando  
15          Gerrirez [phonetic] on Core B. I had Scott Holander  
16          on Core C. I had Stephan Taylor on the in board. I  
17          had Tony -- I don't remember Tony's last name -- on  
18          Area B.

19               Those were the superintendents that made  
20          the decision. I just told them how many carpenters  
21          and how many laborers they could bring back.

22          **Q. Okay. And how did they decide on how to**  
23          **rehire?**

24               MR. ROSENTHAL: Objection, calls for  
25          speculation.

1 BY MR. MARKS:

2 Q. You can answer.

3 You're the head guy there.

4 A. How did they decide? I can't answer that,  
5 sir.

6 Q. You didn't give them any guidelines?

7 A. I told them how many carpenters they could  
8 have for each area and how many laborers.

9 Q. So if they wanted to hire their friends who  
10 were laborers, they could hire their friends?

11 MR. ROSENTHAL: Objection, calls for  
12 speculation.

13 BY MR. MARKS:

14 Q. You didn't tell them which of the laborers  
15 they had to rehire, correct?

16 A. I did not tell them by name which laborers  
17 they had or carpenters that they had to rehire, no,  
18 sir.

19 Q. Did you ever tell them by name which  
20 laborers they would not rehire?

21 A. No, sir. We -- sorry.

22 Q. Go ahead.

23 A. We can't do that. We're union. We're a  
24 signatory with the carpenters, laborers, and  
25 finishers and we'd have grievances filed on us every

1 day if we did that.

2 Q. Was there -- do you know whether M.J. Dean  
3 used any sort of seniority system to recall the laid  
4 off laborers?

5 A. Seniority?

6 Q. Yes.

7 A. It's -- we don't -- we don't work by  
8 seniority.

9 Q. What you're saying is you let your  
10 superintendents decide which specific employees to  
11 recall, and you're saying you had nothing to do with  
12 it?

13 A. That is correct. I picked the  
14 superintendents and I let the superintendents pick  
15 the employees that were brought back.

16 Q. But you didn't have any input on who they  
17 brought back?

18 A. No.

19 Q. And do you know why Parnell Colvin was not  
20 rehired?

21 A. No.

22 Q. Did you ever do an investigation or talk to  
23 any of the superintendents as to why he wasn't  
24 rehired?

25 A. Sir, Parnell was one of 500. We brought

1 200 back. 300 men were let go. I did not talk to  
2 the superintendents about who they brought back and  
3 why they brought them back.

4 Q. When you got this -- you were aware of this  
5 lawsuit before today, correct?

6 A. Yes, sir.

7 Q. Did you ever do any investigation after the  
8 lawsuit was filed as to why Parnell was not brought  
9 back?

10 A. Again, sir, 300 men were not brought back.

11 Q. But 200 were brought back?

12 A. 200 out of 500.

13 Q. I'm asking a simple question.

14 Do you know why Parnell was not brought  
15 back?

16 A. The answer to your question is, no, I do  
17 not know.

18 Q. Was Dave Muti one of the superintendents?

19 A. Dave Muti was -- during the shutdown.

20 Q. After the shutdown?

21 A. After the shutdown, yes, sir.

22 Q. Was he involved in deciding who should be  
23 rehired?

24 A. No, sir.

25 Q. Why not?

1           A.     Again, like I said earlier, the job was  
2     five jobs in one job. I had five superintendents.  
3     The guys that were actually doing the work, taking  
4     down the scaffold, they were the ones who decided  
5     who was brought back.

6           Dave Muti was just a --

7           MR. ROSENTHAL: Go ahead and finish.

8           THE WITNESS: Dave Muti was a  
9     superintendent that I was keeping around to do the  
10    site work when the job eventually started back up.

11           Dave Muti has been a superintendent for  
12    M.J. Dean for a lot of years. Dave Muti is one of  
13    my best friends and he's dying of cancer right now.

14    BY MR. MARKS:

15           **Q.     I'm sorry to hear that.**

16           A.     Yeah, me too.

17           **Q.     Are you -- you're at the jobsite still**  
18    **day-to-day now in July of 2021, correct?**

19           A.     Am I still at the Madison Square Garden  
20    project?

21           **Q.     Yeah.**

22           A.     Yes, sir.

23           **Q.     And Kevin Gutierrez is still there as a**  
24    **general foreman?**

25           A.     Yes, sir.

1 Q. Did Kevin Gutierrez ever tell you that he  
2 heard on a regular basis white supremacy talk among  
3 the employees of Dean in the field?

4 A. No, sir.

5 Q. If he had told you, would you have taken  
6 some action?

7 A. Absolutely, yes, sir.

8 Q. Did Kevin Gutierrez ever express any  
9 negative comments to you about Parnell Colvin?

10 A. No, sir.

11 Q. Let me just be clear, I'm not trying to ask  
12 you the same question.

13 When you let the superintendents rehire,  
14 there was no seniority, there was no based on who  
15 was the best employees, it was simply you left it to  
16 the superintendents to decide who they wanted to  
17 rehire?

18 A. Can I explain?

19 Q. Yes.

20 A. Okay. Each area had about 80 employees  
21 working per quad. When we did the -- when Madison  
22 Square Garden and AECOM Hunt told us what we could  
23 redo once they restarted, that number went from 80  
24 to 32.

25 It was different tasks. It was pulling

1 down the scaffold, which is a very dangerous job.  
2 And I left it up to the superintendents to tell me  
3 who the best men were for that job.

4 Q. Okay. But it wasn't necessarily -- they  
5 didn't rate each employee and go through any  
6 numerical system of, These are the employees I'm  
7 rehiring.

8 They just gave you the names?

9 A. Yes, sir.

10 Q. And no seniority was used?

11 A. No, sir.

12 Q. And no, like, experience in construction  
13 was used?

14 A. Yes, sir. Experience in construction in  
15 dismantling the shoring that high up, yes, sir, I'm  
16 sure all of that was thought before --

17 Q. I'm saying they didn't go through with you  
18 and say, Hey, this guy had 20 years experience in  
19 doing it or this guy had ten.

20 They just gave you the names?

21 A. No offense, Mr. Marks. But I have a lot  
22 going on on my plate. I can't micromanage these  
23 guys. I've got to let them do their jobs and earn  
24 their money.

25 Q. Okay. That's all I'm asking you. I'm not



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JOHN THOMASON, 07/29/2021

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1 suggesting -- I'm just asking what you did.

2 So you let the superintendents choose who  
3 they wanted to bring back after the shutdown ended  
4 on the Sphere project.

5 And this would have been in April of 2020;  
6 is that right?

7 A. Yes, sir.

8 Q. Okay.

9 MR. MARKS: Hey, Rob, I want to talk to  
10 Nicole. Why don't we take five?

11 MR. ROSENTHAL: Okay.

12 MR. MARKS: And we'll come back and we'll  
13 try to wrap this up. Okay.

14 (Thereupon, a break was taken.)

15 BY MR. MARKS:

16 Q. Mr. Thomason, do you recall meeting Parnell  
17 Colvin at the Patrick Lane office, not at the job  
18 site?

19 A. No, sir, I do not.

20 Q. Did you have a secretary named Jane?

21 A. M.J. Dean has a secretary named Jeanette.

22 Q. Okay. Do you expect to be on the project  
23 until it's completed -- until the Dean Construction  
24 work is completed?

25 A. Me personally, sir, or M.J. Dean?

1 Q. You personally.

2 A. Yes, sir.

3 Q. Do you know how many African-American  
4 employees Dean had prior to the pandemic working on  
5 the Sphere project?

6 A. Did we have any African-American?

7 Q. Do you know how many African-American  
8 employees you had working on the Sphere project pre  
9 the pandemic layoffs?

10 A. I do not, sir.

11 Q. And do you know how many African-American  
12 employees Dean had working on the Sphere project  
13 after the pandemic layoffs, the rehires?

14 A. I don't know the actual count, sir.

15 Q. Was any effort made to ensure there was a  
16 diverse workforce including African-American  
17 employees as part of the rehire after the pandemic?

18 A. No, I don't believe so.

19 MR. MARKS: All right. That's all I have.  
20 I'll pass the witness.

21 MR. ROSENTHAL: I have no questions.

22 MR. MARKS: All right. Will you take care  
23 of the reading and signing?

24 MR. ROSENTHAL: Yes.

25 MR. MARKS: Okay. Thank you.

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(Proceedings concluded at 3:15 p.m.)

CERTIFICATE OF DEPONENT

I, JOHN THOMASON, deponent herein, do hereby certify and declare the within and foregoing transcription to be my deposition in said action; under penalty of perjury; that I have read, corrected and do hereby affix my signature to said deposition.

JOHN THOMASON, Deponent

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JOHN THOMASON, 07/29/2021

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CERTIFICATE OF REPORTER


STATE OF NEVADA     )  
                                      )   SS:  
COUNTY OF CLARK    )

I, Jackie Jennelle, RPR, CCR #809, Clark  
County, State of Nevada, do hereby certify: That I  
reported the video conference deposition of JOHN  
THOMASON, commencing on THURSDAY, JULY 29, 2021, at  
2:00 p.m.

That prior to being deposed, the witness  
was duly sworn by me to testify to the truth. That  
I thereafter transcribed my said shorthand notes  
into typewriting and that the typewritten transcript  
is a complete, true and accurate transcription of my  
said shorthand notes.

I further certify that I am not a relative  
or employee of counsel, of any of the parties, nor a  
relative or employee of the parties involved in said  
action, nor a person financially interested in the  
action.

IN WITNESS WHEREOF, I have set my hand in my  
office in the County of Clark, State of Nevada, this  
9th day of August, 2021.

  
\_\_\_\_\_  
JACKIE JENNELLE, RPR, CCR #809

---

## **EXHIBIT 13**

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

PARNELL COLVIN,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CASE NO.:
	)	2:20-cv-01765-APG-EJY
M.J. DEAN CONSTRUCTION,	)	
INC.,	)	
	)	
Defendant.	)	
	)	

VIDEO CONFERENCE DEPOSITION OF PAUL ROSEQUIST  
LAS VEGAS, NEVADA  
FRIDAY, AUGUST 6, 2021

**CERTIFIED  
TRANSCRIPT**

REPORTED BY: JACKIE JENNELLE, RPR, CCR #809  
JOB #416567

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PAUL ROSEQUIST, 08/06/2021

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1 APPEARANCES (ALL VIA VIDEO CONFERENCE):

2 For the Plaintiff:

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4 BY: DANIEL MARKS, ESQ.  
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7 For the Defendants:

8 HOWARD & HOWARD ATTORNEYS PLLC  
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## I N D E X

WITNESS: PAUL ROSEQUIST

## EXAMINATION

PAGE

BY MR. MARKS

4

## EXHIBITS INTRODUCED

EXHIBIT

PAGE

Exhibit 6 Employee Incident Form

10

Exhibit 8 Graffiti

16

Exhibit 9 Graffiti

17

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LAS VEGAS, NEVADA

FRIDAY, AUGUST 6, 2021; 10:00 a.m.

-oOo-

Thereupon--

PAUL ROSEQUIST,  
was called as a witness, and having been first duly  
sworn, was examined and testified as follows:

EXAMINATION

BY MR. MARKS:

**Q. Could you state your name, please?**

A. Paul Rosequist.

BY MR. MARKS:

**Q. What's your business address?**

A. 5055 West Patrick Avenue.

**Q. Okay. And is that the M.J. Dean  
Construction company?**

A. Yes, it is.

**Q. Okay.**

MR. MARKS: And, Rob, the record should  
reflect that we're conducting this deposition by  
agreement via Zoom.

Is that correct?

MR. ROSENTHAL: That's correct.

BY MR. MARKS:

**Q. Mr. Rosequist, have you had your deposition**

1 taken before?

2 A. I have not.

3 Q. You had an opportunity to talk about what a  
4 deposition is with your attorney, Mr. Rosenthal?

5 A. Yes, sir.

6 Q. In addition to what he told you, I'll go  
7 over a couple of the basic ground rules.

8 Even though we're by Zoom, the oath the  
9 court reporter gave you is the exact same oath as if  
10 we were in court and it carries the same obligation  
11 to tell the truth and the same penalties of perjury  
12 for failure to tell the truth.

13 Do you understand that?

14 A. Yes, I do.

15 Q. That is the way this works. Even though  
16 we're in informal surroundings and there's no judge  
17 with black robes on.

18 Do you understand?

19 A. Understood.

20 Q. You'll have an opportunity to read the  
21 transcript at a later date, and if there's a mistake  
22 or you want to make a correction, you'll be able to  
23 do that.

24 If you made a major correction, I could  
25 comment if the matter went to trial and that could

1 affect your credibility.

2 Do you understand that?

3 A. Yes, sir.

4 Q. Okay. Let's say it was a car accident and  
5 today you thought the light was red and later you  
6 thought the light was yellow, obviously that would  
7 be a difference and we could argue that you  
8 shouldn't be believed because you made a change in  
9 your testimony.

10 Do you understand?

11 A. Yes, sir.

12 Q. Your attorney may object from time to time.  
13 There is no judge to rule on the objections, so  
14 we'll let him finish and then you would normally  
15 answer.

16 I don't expect him to instruct you not to  
17 answer, but you're obligated to answer unless he  
18 instructs you not to answer, which I don't expect to  
19 occur.

20 Do you understand?

21 A. Yes, sir.

22 Q. So he would go -- I might say something.  
23 Then I would say, Answer please, and unless he tells  
24 you otherwise, you would answer.

25 A. Yes, sir.

1 Q. Okay. You're doing a good job of letting  
2 me finish and I'll try to let you finish because the  
3 court reporter can only take down one person at a  
4 time.

5 What's your educational background?

6 A. High school degree, high school diploma and  
7 a four-year apprenticeship through Carpenters Local  
8 1977.

9 Q. Was that Carpenters Local here in Las  
10 Vegas?

11 A. Yes, sir.

12 Q. What do you mean by a four-year  
13 apprenticeship?

14 A. It's in classroom and on-the-job training  
15 for carpentry.

16 Q. And then you became a journeyman after the  
17 four years?

18 A. Yes, sir.

19 Q. And you were a -- you sent over a resumé.  
20 It said you were a journeyman carpenter from 1988 to  
21 2008.

22 Is that correct?

23 A. Yes, sir.

24 Q. What did you do from 2008 to the present?

25 A. I changed local to Laborers Local 872 and

1 got into management with M.J. Dean.

2 Q. So are you still in the union?

3 A. Yes, sir.

4 Q. What local is that?

5 A. Laborers Local 872.

6 Q. Why did you switch locals?

7 A. To draw my retirement from the Carpenters  
8 Local.

9 Q. Is the new local a Laborers Local?

10 A. Yes, sir.

11 Q. Okay. Tell me what management jobs you've  
12 had with Dean.

13 A. Starting -- they've been safety management.

14 Q. What's your present title?

15 A. Project safety manager.

16 Q. And are you working on the MSG Sphere  
17 project?

18 A. Yes, I am.

19 Q. Okay. And for how long have you worked on  
20 that?

21 A. Approximately two years.

22 Q. Did you start in 2019?

23 A. Yes, sir.

24 Q. Is that when Dean's part of the project  
25 started?

1 A. Yes, sir. They started just a little  
2 before I did.

3 Q. Okay. What are your duties as project  
4 safety manager?

5 A. I am there to oversee the site that it is  
6 within OSHA compliance, the site itself in safety.  
7 I also oversee the men to make sure they're  
8 compliant with all safety, all the safety rules and  
9 regulations put forth by M.J. Dean and by OSHA. And  
10 I investigate all accidents, incidents.

11 I also interface with OSHA and the  
12 insurance companies when they come on the job to  
13 audit. And I am the point of contact for safety on  
14 the job and I work with the general contractor.

15 Q. And you've been doing that on the Sphere  
16 project since 2019?

17 A. Yes.

18 Q. So your duties have remained the same for  
19 the last two years?

20 A. On the MSG Sphere project, yes.

21 Q. Do you know Parnell Colvin?

22 A. I do.

23 Q. How did you first meet him?

24 A. Generally on the job on my walks I saw  
25 Colvin working.

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1 Q. Did there come a time when he reported the  
2 use of the N-word to you?

3 A. Yes.

4 Q. And do you recall when that was?

5 A. That was November 14th.

6 Q. Did you review any documents before this  
7 deposition in the last day or two?

8 A. Yes.

9 (Exhibit 6 Employee Incident Form introduced.)

10 BY MR. MARKS:

11 Q. Let me show you what we've previously  
12 marked, so we'll use the same numbering as  
13 Exhibit 6. We're going to put that up on the  
14 screen.

15 You had an opportunity to review Exhibit 6  
16 before the deposition, correct?

17 A. Yes, sir.

18 Q. And is this a report -- did you have  
19 anything to do with having this report filled out by  
20 Parnell Colvin?

21 MR. ROSENTHAL: Objection, vague and  
22 ambiguous.

23 You can answer.

24 BY MR. MARKS:

25 Q. You can answer.



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1           A.     When Parnell Colvin was brought to me by  
2     AECOM Hunt safety. They came together. He told me  
3     I had a situation that I needed to look into.

4           I brought Parnell Colvin into my office,  
5     talked to him, asked him the problem. He started  
6     telling me about it, and I asked him to fill out a  
7     witness statement on the iPad.

8           So I opened the iPad, got to the proper  
9     documentation and had him fill that out.

10          **Q.     Did you ever try to convince Mr. Colvin not**  
11     **to file a report about the use of the N-word?**

12          A.     No, sir.

13          **Q.     Did you ever tell him that he could affect**  
14     **his future job prospects if he filled out this**  
15     **report?**

16          A.     No, sir.

17          **Q.     Did you ever use words to the effect that**  
18     **it would come back and haunt Mr. Colvin?**

19          A.     No, sir.

20          **Q.     Did you ever say he should think hard about**  
21     **filing this complaint?**

22          A.     No, sir.

23          **Q.     Okay. After -- so did Mr. Colvin type**  
24     **Exhibit 6?**

25          A.     Yes.

1 Q. And what happened after he typed it?

2 Did he give it to you?

3 A. He handed me back the iPad and I reviewed  
4 it and then submitted it through the AP.

5 Q. And who did you submit it to?

6 A. It goes to M.J. Dean, my team, safety, M.J.  
7 Dean safety team.

8 Q. Are you head of that safety team?

9 A. I am the head of the safety team on the MSG  
10 Sphere project, yes, sir.

11 Q. And who did this Exhibit 6 go to? Did it  
12 go to an office? Did it go to a person?

13 Who did it go to?

14 A. It went to myself, my team that's on this  
15 project and Jeff Kent, my immediate supervisor.

16 Q. Jeff who?

17 A. Jeff Kent.

18 Q. Could you spell it?

19 A. J-E-F-F, K-E-N-T.

20 Q. Kent?

21 What's his title?

22 A. He's safety director.

23 Q. Okay. Did you ever investigate the  
24 allegations contained in Exhibit 6?

25 A. Yes, I did.

1           **Q.     Tell me about your investigation.**

2                   MR. ROSENTHAL:   Objection, overbroad, vague  
3           and ambiguous.

4           BY MR. MARKS:

5           **Q.     Tell me what you did to investigate the**  
6           **allegations contained in Exhibit 6.**

7                   A.     I -- when it first started, as I've stated  
8           prior, is I had Parnell Colvin fill out his report.  
9           I submitted that report.

10                   I asked him if there was any other  
11           witnesses or anyone else he would like for me to  
12           interview, and he told me he wanted me to interview  
13           Ricky Flores, which is one of the foremen on the MSG  
14           Sphere project.

15                   I then contacted Kevin Gutierrez to take  
16           his testimony, his incident investigation, his  
17           statement. I called him on the phone, asked him to  
18           come to my office.

19                   When he got to my office, I gave him some  
20           general information on what was happening at the  
21           time and I had him fill out a statement like I did  
22           with Mr. Colvin.

23           **Q.     Okay. Did Mr. Gutierrez deny using the**  
24           **N-word?**

25                   A.     Yes.

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1 Q. And --

2 A. Adamantly denied that.

3 Q. Did Mr. Flores hear anything about the  
4 N-word on the job?

5 A. Not that he has ever told me about.

6 Q. Okay. So after that, did anything else  
7 ever happen regarding your investigation?

8 A. Yes.

9 Q. What did you do?

10 A. I then called Ricky Flores, had him come to  
11 my office, gave him the same basic rundown, had him  
12 fill out the forms in the same manner as previously  
13 and then I submitted his.

14 I then called in Dave McGrandy (phonetic)  
15 who was the area superintendent for Area D which  
16 Colvin was a part of. And I had him also fill out a  
17 witness statement.

18 Then when I got all the witness statements  
19 and after I had reviewed them, I called John  
20 Thomason and went over these with John Thomason and  
21 seeked his counsel from that point forward.

22 Q. What did John Thomason say?

23 A. I wouldn't want to misquote Mr. Thomason.  
24 He spoke about the possibilities of moving somebody  
25 around to make this work for everybody.

1 Q. Okay. Did you ever -- okay. Let's back  
2 up.

3 Did any other witnesses -- did any other  
4 witnesses report to you they heard the N-word on the  
5 job at the Sphere project?

6 A. No, sir.

7 Q. Had you in walking the project ever heard  
8 racial slurs?

9 A. No, sir.

10 Q. Had you seen racial slurs, graffiti, in the  
11 bathroom at the project?

12 A. No, sir.

13 Q. You never saw racial slurs in a bathroom?

14 A. I don't typically use the restrooms that  
15 are on the site. I use an office restroom.

16 Q. Okay. So on the N-word incident which is  
17 depicted in Exhibit 6, a decision was made to move  
18 Parnell away from Kevin Gutierrez; is that right?

19 A. That decision was made without my -- I  
20 presented the evidence that I had to John Thomason  
21 and he with counsel with other superintendents on  
22 the project did what they did.

23 Q. Okay. But have you ever seen or heard  
24 white supremacist comments on the Sphere project in  
25 the last two years?

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1 A. No, sir.

2 Q. And have you ever heard the use of the  
3 N-word on the Sphere project?

4 A. No, sir.

5 Q. Do you have a social relationship with  
6 Kevin Gutierrez?

7 A. Not beyond work relationship.

8 (Exhibit 8 Graffiti introduced.)

9 BY MR. MARKS:

10 Q. Okay. Let's go to Exhibit 8.

11 Had you ever seen this type of graffiti  
12 depicted in Exhibit 8 in a restroom at the MSG  
13 Sphere project during 2019, 2020, or 2021?

14 A. No.

15 Q. If you had seen this, would you have taken  
16 any steps? What steps would you have taken if you  
17 had seen this?

18 MR. ROSENTHAL: Objection, incomplete  
19 hypothetical, calls for speculation, vague and  
20 ambiguous.

21 BY MR. MARKS:

22 Q. You can answer.

23 A. Any time any graffiti was brought to me on  
24 any project, including this project, I will  
25 immediately take that information to those who

1 control the restrooms or those who control the area  
2 where the graffiti is and have it removed by those  
3 who remove the graffiti.

4 Q. But you never saw any white supremacist or  
5 anti-African-American graffiti?

6 A. Not that I recall, no.

7 Q. Did you ever see any graffiti that was  
8 discriminatory against any other ethnic group, such  
9 as Hispanic-Americans?

10 A. Not that I can recall.

11 (Exhibit 9 Graffiti introduced.)

12 BY MR. MARKS:

13 Q. Let's go to Exhibit 9.

14 Did you ever see the graffiti depicted in  
15 Exhibit 9 in the restrooms at the MSG Sphere job  
16 site?

17 A. No, I have not seen that.

18 Q. Regarding the use of the N-word and  
19 Exhibit 6, did you ever send that report to human  
20 resources?

21 A. That is sent to Jeff Kent who is my  
22 immediate supervisor in the M.J. Dean main office.

23 Q. But you never sent it to HR, human  
24 resources?

25 A. Myself, I did not.

1           **Q. Did you conduct weekly safety meetings?**

2           A. My team, yes, they conduct weekly safety  
3 meetings.

4           MR. ROSENTHAL: Could we get your picture  
5 as the main so we can see you instead of the  
6 exhibit?

7           MS. YOUNG: Do you have any more questions  
8 on this exhibit, Dan?

9           MR. MARKS: No. You can take it down.

10          MR. ROSENTHAL: Thank you.

11 BY MR. MARKS:

12          **Q. I'm asking you if you conduct the weekly**  
13 **safety meetings?**

14          A. I do not conduct them. I give the  
15 information out to my team who conducts them. I'm  
16 the one who comes up with the weekly topic.

17          **Q. Did you ever as part of the weekly safety**  
18 **meetings talk about anti-African-American graffiti**  
19 **in restrooms?**

20          A. Not specifically graffiti in restrooms, no.

21          **Q. Did you ever talk about use of the N-word**  
22 **on a job site?**

23          A. Yes.

24          **Q. What specifically did you discuss at the**  
25 **safety meetings about that topic?**



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1 MR. ROSENTHAL: Objection, assumes facts  
2 not in evidence, lacks foundation.

3 BY MR. MARKS:

4 Q. Go ahead.

5 A. So -- as I do weekly safety meetings, we  
6 come up with different topics, and  
7 anti--discrimination, harassment, bullying, those  
8 things, and I have a template for those and I will  
9 go over those as well as I go over fall protection,  
10 I go over housekeeping, generally these general  
11 topics I have a website that I can bring these  
12 topics up.

13 Q. When did you go over anti--discrimination?  
14 Do you know when you did it?

15 A. I don't know.

16 Q. Did you ever do an anti-discrimination  
17 topic after the report of the N-word by Mr. Colvin?

18 A. I don't recall if it was before or after.

19 Q. Since you never saw any  
20 anti-African-American graffiti, you didn't  
21 necessarily do any anti-discrimination training  
22 after the time of the graffiti, correct?

23 A. As I stated before, I'm not sure if I did  
24 it before or after.

25 Q. So you have anti-discrimination,

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1 anti-bullying as a general topic, but you never did  
2 it in reaction to anything that happened on the job  
3 site, correct?

4 A. I don't recall.

5 Q. You don't recall if you did or didn't?

6 A. After this situation, I don't recall if I  
7 specifically went over it with this one.

8 Q. With this incident of graffiti in the  
9 restrooms or use of the N-word, correct?

10 A. The graffiti in the restrooms, as I stated  
11 before, the first I saw it is what you showed me  
12 with the attorneys. So, no, I didn't, I did not  
13 have a meeting on that. I did not know about that.

14 Q. On the issue -- during 2020, do you recall  
15 in the spring of 2020 before any COVID issue there  
16 was -- we had the 2020 -- it was an election year.

17 Was there ever a lot of pro Trump graffiti  
18 or signs on the job site?

19 MR. ROSENTHAL: Objection, vague and  
20 ambiguous.

21 THE WITNESS: What you mean by that, I'm  
22 not exactly sure. Yes, there are people that  
23 support Trump on the job site.

24 BY MR. MARKS:

25 Q. Right.

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1 But the people that supported Trump, were  
2 they saying, We support Trump because of white  
3 power?

4 A. No, sir.

5 Q. Were they white supremacists?

6 MR. ROSENTHAL: Objection, calls for  
7 speculation.

8 THE WITNESS: I don't know the answer to  
9 that question.

10 BY MR. MARKS:

11 Q. Did you ever see swastikas on the job site?

12 A. No, sir.

13 Q. Did you ever see Confederate flags on the  
14 job site?

15 A. No, sir.

16 Q. Again, did you ever see any  
17 anti-African-American signs, comments on the job  
18 site?

19 A. No.

20 Q. All right. You recall the COVID, when  
21 COVID hit Clark County and the rest of America in  
22 March to April 2020 period?

23 A. Yes, sir.

24 Q. That was in March of 2020?

25 A. Yes, sir.

1 Q. Okay. Isn't it true the MSG Sphere project  
2 was -- construction was never totally shut down?

3 A. Construction was shut down.

4 Q. How long do you think construction was shut  
5 down for?

6 A. I don't know the answer to that for sure.

7 Q. Were you ever laid off?

8 A. I was never laid off, no.

9 Q. Did you always report to the Sphere  
10 project?

11 A. Yes, sir.

12 Q. What is called the -- that was during the  
13 whole COVID period, correct?

14 A. Yes, sir.

15 Q. And when you reported to the Sphere  
16 project, what were you doing?

17 A. We were preparing for a shutdown. During  
18 those times, I was retrieving badges, I was  
19 retrieving safety equipment from employees who were  
20 being laid off. I was preparing my own team. I  
21 transferred parts of my own team.

22 Q. Then do you recall a time when construction  
23 started up again, correct?

24 A. Yes, sir.

25 Q. And you never left the job site, meaning

1 through the whole COVID period you always reported  
2 to MSG Sphere, correct?

3 A. If you're talking about myself, that's  
4 correct.

5 Q. And you recall that people were rehired?

6 A. Yes.

7 Q. And do you know for how long people were  
8 laid off? Can you recall?

9 MR. ROSENTHAL: Objection, overbroad, vague  
10 and ambiguous.

11 BY MR. MARKS:

12 Q. Do you recall?

13 A. I don't.

14 Q. Were you involved in the decision of who to  
15 lay off?

16 A. Beyond my team, no.

17 Q. Were you involved in the decision who to  
18 rehire?

19 A. No, sir.

20 Q. When people talk about use of the term  
21 "yard" on a job site, what are they referring to?

22 A. That would be referring to where materials  
23 are stacked, stored.

24 Q. And sitting here today, you don't recall  
25 for how long the Dean phase of construction was

1 stopped during the COVID period?

2 A. No, sir, I don't.

3 Q. If Mr. Thomason testified it was stopped  
4 for approximately a week, would you disagree with  
5 that?

6 A. I would not because I don't know how long  
7 it was stopped for exactly.

8 Q. Okay. But you kept getting your paycheck  
9 and kept reporting to the MSG Sphere project,  
10 correct?

11 A. Yes, sir.

12 Q. And wouldn't the yard be in use as long as  
13 construction was going on because materials had to  
14 be stored there for use in construction?

15 MR. ROSENTHAL: Objection, vague and  
16 ambiguous, calls for speculation.

17 BY MR. MARKS:

18 Q. Isn't that true, sir?

19 A. No, that's not true. At the time when the  
20 construction was stopping everything was stopping.

21 Q. Right.

22 But then when it restarts, you use the yard  
23 again, correct?

24 A. Yes, sir.

25 Q. And, in fact, you're using the yard right

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1     **now, aren't you?**

2                 MR. ROSENTHAL: Objection, vague and  
3     ambiguous, overbroad.

4                 THE WITNESS: There are portions that we  
5     have materials stacked and they've been shipped out,  
6     yes.

7     BY MR. MARKS:

8                 **Q.     Okay. Do Dean personnel work in the yard**  
9     **area?**

10                A.     I don't know if there's anyone in the yard  
11     area at this time or not.

12                **Q.     But in 2019 and 2020 Dean employees were**  
13     **working in the yard area, correct?**

14                A.     I don't know. Again, I'm not in control of  
15     the manpower or the placement of men.

16                **Q.     Have you heard any white supremacy**  
17     **anti-African-American comments in the year 2021 at**  
18     **the M.J. Dean Construction site at the Sphere**  
19     **project?**

20                MR. ROSENTHAL: Objection, asked and  
21     answered.

22                Go ahead.

23                THE WITNESS: Again, no, I have not.

24     BY MR. MARKS:

25                **Q.     You said that you sent Exhibit 6 to**

1 Mr. Kent.

2 You don't know whether or not Mr. Kent  
3 forwarded Exhibit 6 to human resources, correct?

4 A. I don't.

5 Q. And it's true that no memos or any other  
6 written material was ever submitted to the laborers  
7 about any of the use of the N-word or any  
8 anti-discrimination materials were never  
9 disseminated, correct?

10 A. I'm going to have to ask you to --

11 BY MR. MARKS:

12 Q. I'll repeat it.

13 Were you involved in any memos about  
14 anti-discrimination being given to the workmen at  
15 the Sphere job site?

16 A. Yes. I was a part of that during the  
17 anti-discrimination portion of the safety meetings  
18 which I spoke to you about earlier.

19 Q. What do you disseminate during those  
20 meetings?

21 A. What do you mean by that?

22 Q. Do you give handouts to the actual  
23 laborers?

24 A. Yes. We do handouts and they sign that  
25 they've gotten the meetings.



1 Q. And is that similar to what's in the  
2 employee handbook that Dean has a policy of  
3 non-discrimination?

4 A. Yes. It follows the same guidelines as  
5 M.J. Dean.

6 Q. But was anything specifically discussed in  
7 the handouts about the use of the N-word on the job  
8 site?

9 A. Again, I don't know if it was before or  
10 after. It's a broad statement on discrimination of  
11 any kind. It's a zero tolerance with M.J. Dean for  
12 discrimination of any kind.

13 Q. So it's a broad statement, but it wasn't  
14 specifically brought up that we had a report of the  
15 use of the N-word on the job site?

16 You don't recall that ever being discussed  
17 at a safety meeting with the laborers on the Sphere  
18 project?

19 A. I don't recall if it was covered  
20 specifically on this situation, no.

21 Q. Since you never knew about racist graffiti,  
22 you never brought to the attention of the workers at  
23 the Sphere project that there had been reports of  
24 racist graffiti; is that correct?

25 MR. ROSENTHAL: Objection, assumes facts

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1 not in evidence, calls for speculation.

2 You can still answer.

3 THE WITNESS: Can you repeat the question?

4 BY MR. MARKS:

5 Q. You never discussed the use of racist  
6 graffiti in restrooms with the laborers on the  
7 Sphere project in 2019 or 2020?

8 A. On graffiti in the restrooms? No.

9 Q. Okay.

10 MR. MARKS: I don't have anything further.  
11 6789 I have no questions.

12 MR. MARKS: All right. Thank you.

13 You'll take care of the signature and  
14 signing if he's going to read and sign?

15 MR. ROSENTHAL: Yes, sir.

16 - - - - -

17  
18 (Proceedings concluded at 10:37 a.m.)  
19  
20  
21  
22  
23  
24  
25



JACKIE JENNELLE, RPR, CCR #809